

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA

W. A. DREW EDMONDSON, in his)
capacity as ATTORNEY GENERAL)
OF THE STATE OF OKLAHOMA and)
OKLAHOMA SECRETARY OF THE)
ENVIRONMENT C. MILES TOLBERT,)
in his capacity as the)
TRUSTEE FOR NATURAL RESOURCES)
FOR THE STATE OF OKLAHOMA,)

Plaintiff,)

vs.)

TYSON FOODS, INC., et al,)

Defendants.)

4:05-CV-00329-TCK-SAJ

THE VIDEOTAPED DEPOSITION OF
ROBERT TAYLOR, PhD, produced as a witness on
behalf of the Defendants in the above styled and
numbered cause, taken on the 15th day of July, 2008,
in the City of Tulsa, County of Tulsa, State of
Oklahoma, before me, Lisa A. Steinmeyer, a Certified
Shorthand Reporter, duly certified under and by
virtue of the laws of the State of Oklahoma.

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I N D E X

W I T N E S S

P A G E

ROBERT TAYLOR, PhD

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08:51AM

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1 (Whereupon, the deposition began at
2 9:00 a.m.)

3 VIDEOGRAPHER: We are now on the Record for
4 the deposition of Dr. Robert Taylor. Today is July
5 15th, 2008. The time is 8:59 a.m. Would counsel 08:59AM
6 please identify themselves for the Record?

7 MR. ELROD: John Elrod for Simmons.

8 MR. BASSETT: Woody Bassett for the
9 George's defendants.

10 MR. HIXON: Philip Hixon for Peterson 08:59AM
11 Farms.

12 MR. TUCKER: Colin Tucker for Cargill and
13 Cargill Turkey Production.

14 MR. RIGGS: Jennifer?

15 MS. GRIFFIN: Jennifer Griffin for Willow 08:59AM
16 Brook Foods.

17 MR. RIGGS: David Riggs for the State of
18 Oklahoma.

19 MS. XIDIS: Claire Xidis for the State of
20 Oklahoma.

21 VIDEOGRAPHER: Thank you. The witness may
22 be sworn in.

23 ROBERT TAYLOR, PhD
24 having first been duly sworn to testify the truth,
25 the whole truth and nothing but the truth, testified

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1 as follows:

2 DIRECT EXAMINATION

3 BY MR. ELROD:

4 Q Dr. Taylor, how are you this morning?

5 A I'm fine. 09:00AM

6 Q Okay. I want to start by asking you what you

7 have done since, two things, your previous report

8 and your testimony at the PI hearing, and if you did

9 nothing between your previous report and the

10 testimony at the PI hearing other than prepare for 09:00AM

11 the PI hearing, then, you know, we don't need to go

12 into that, but I want to know what you've done

13 basically since your first time around.

14 A Since this May report, I received Willow Brook

15 documents and I reviewed, quickly reviewed the 09:00AM

16 contracts and looked at some of the Agri Stats but

17 not most of the other material, and I went back and

18 looked at some of the University of Arkansas crop

19 cost of production budgets that are on the Internet.

20 That's all I can recall doing that was not covered 09:00AM

21 in the report and the document production.

22 Q What did you do then since the PI hearing and

23 the present report?

24 A Between the PI hearing --

25 Q Your previous testimony and the present 09:01AM

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1 report.

2 A Worked on the present report.

3 Q All right, and did you -- well, tell me what
4 you did in terms of research, looking at new
5 documents, looking at new information. 09:01AM

6 A In terms of research, I went back and looked
7 more carefully at all of the contracts I had. I
8 went back and looked at some of the ag econ studies
9 and then uncovered some newer studies that are cited
10 in the May report. 09:01AM

11 Q Anything else?

12 A Nothing comes to mind.

13 Q Tell me the approximate number of hours that
14 you spent on this project from between the PI
15 hearing testimony and the present time. 09:02AM

16 A I did not keep a running tally on that. I can
17 look on my spreadsheet and give it to you, but maybe
18 100 hours.

19 Q Okay. Did you conduct any interviews of
20 people during that period of time? 09:02AM

21 A I did not interview any people during that
22 time.

23 Q Okay.

24 A That I can recall right now.

25 Q Now, what specifically about Willow Brook were 09:02AM

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1 you looking at?

2 A Simply their contracts.

3 Q Their grower contracts?

4 A Grower contracts, yes.

5 Q And why were you focusing on Willow Brook in 09:03AM
6 terms of grower contracts?

7 A For completeness. In the summary covered in
8 my May report, I did not have Willow Brook contracts
9 to look at.

10 Q Was there anything about the Willow Brook 09:03AM
11 contracts that you deemed significant in terms of
12 the opinions you're offering in your present report?

13 A The only thing I noticed in the contracts is
14 they did not specifically address responsibility for
15 poultry waste and used litter -- 09:03AM

16 Q Anything else?

17 A -- while recent contracts for the other
18 defendants did.

19 Q All right.

20 A That's really all I noticed. 09:03AM

21 Q And did you look at contracts for -- between
22 other companies and growers since the PI hearing?

23 A Recently I received in the mail unsolicited a
24 Pilgrim's Pride contract from a north Alabama
25 grower. 09:04AM

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1 Q And you don't know who sent it to you?

2 A I know who sent it to me. I don't recall his
3 name now. I think I saved the envelope.

4 Q Well, who sent it to you and why?

5 A Trying to think of his name. It just doesn't 09:04AM
6 come, but I can get it for you. I saved the
7 envelope. I have never personally met him. He has
8 called me a time or two and commented on my first
9 report done at Auburn on restoring economic health
10 to contract poultry production, and I really know 09:05AM
11 nothing about him.

12 Q Is he a grower?

13 A He is a grower.

14 Q With Pilgrim's Pride?

15 A Apparently. 09:05AM

16 Q And if you would provide his name and contact
17 information to Mr. Riggs, I would appreciate it.

18 A Okay, sure.

19 Q So you had no communications with him; you
20 just opened the mail one day and here was this 09:05AM
21 unsolicited Pilgrim's Pride contract?

22 A He called me and thanked me for my report and
23 said that he was sending me the latest contract. I
24 did not solicit it.

25 Q Okay. Did -- are you under the impression 09:05AM

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1 that Pilgrim's Pride had just changed some of the
2 parts of their contract or did he want to show you
3 changes?

4 A He had just highlighted some areas of concern.

5 Q And what were those as best you can recall 09:06AM
6 right now?

7 A I don't even recall. I kind of glanced at it
8 and put it down on my desk and it's another contract
9 and it was not relevant to this litigation.

10 Q What have you done in terms of looking at Agri 09:06AM
11 Stats since the PI hearing?

12 A I have looked at two of the Willow Brook Agri
13 Stats the two plaintiff attorneys sent me. One is
14 for the beginning of the series and one is for the
15 end, and seems like it was April of '06 and November 09:06AM
16 of '07 and -- for turkey, and I looked primarily at
17 the feed hauling cost breakdown.

18 Q Anything else that you looked at in terms of
19 the Willow Brook Agri Stats?

20 A I don't think so. I flipped through it, and 09:07AM
21 it's the standard format that I've seen before and I
22 went to the feed delivery department and I looked at
23 the -- or the feed section of it and looked at their
24 breakout of feed hauling costs and looked at the
25 wages and benefits paid to their feed truck drivers. 09:07AM

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1 I did not specifically look at Willow Brook for any
2 of it. I looked at Region 52, Agri Stats Region 52
3 averages for those two monthly time periods.

4 Q Agri Stats reports anonymously? I mean let me
5 restate that. They don't declare what companies are 09:08AM
6 reporting on any particular line; is that true?

7 A They give highly detailed information for each
8 complex. They do not identify complexes for other
9 integrators by name.

10 Q Okay. 09:08AM

11 A But there is a cover sheet that lists the
12 participating integrators in each region.

13 Q All right, and Region 52 encompasses what
14 geography?

15 A It's this part of Arkansas. I think they say 09:08AM
16 northwest Arkansas, southeast Missouri, but
17 presumably it also includes this corner of Oklahoma.

18 Q But when you were -- you knew the Willow Brook
19 information because it was so identified; is that
20 true? 09:09AM

21 A They list all of the participating complexes.
22 For that company, in this case Willow Brook, there
23 will be some identifier for Willow Brook, but I
24 didn't look at that. I simply looked at the Region
25 52 average. 09:09AM

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1 Q So let me make sure I've got this straight.
2 You weren't looking at Willow Brook information
3 necessarily; you simply received the Agri Stats from
4 Region 52 from those two months from Willow Brook as
5 part of this case? 09:09AM

6 A Yes, and all other regions.

7 Q Okay. So what you were looking at was Agri
8 Stats information for various complexes in northwest
9 Arkansas, northeast Oklahoma, southeast Missouri
10 without being able to identify any particular piece 09:09AM
11 of information to a particular company?

12 A Except for Willow Brook, but I didn't look at
13 it, but I could have. I know I can go back and
14 identify it.

15 Q And you were focusing on feed hauling costs? 09:10AM

16 A Just feed hauling costs and wages and benefits
17 for feed truck drivers.

18 Q What was the reason you were focusing on that
19 information?

20 A Which part? The feed hauling costs? 09:10AM

21 Q Yes, sir.

22 A Because, as you know, part of my study deals
23 with hauling litter, and I wanted to put those
24 hauling costs in perspective relative to feed
25 hauling costs even though it's not exactly the same 09:10AM

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1 and specifically to look at the fuel component of
2 hauling costs because fuel has gone up so much
3 recently, even since I did this May report.

4 Q So if I understand your testimony, you were
5 looking at feed hauling costs, especially the fuel
6 component, as part of your analysis of litter
7 transportation costs; is that true?

09:10AM

8 A Just to get some perspective on it.

9 Q And how did you use that information in regard
10 to translating to litter hauling costs?

09:11AM

11 A I really didn't. I didn't use it in
12 estimating litter hauling costs, but on a per ton
13 per mile basis, the feed hauling cost numbers are
14 comparable to those I have referenced in my May
15 report.

09:11AM

16 Q What is the weight capacity of a typical
17 incoming feed truck -- I'm sorry. You're not
18 talking about feed brought in from Iowa to Kansas to
19 the feed mill; you're talking about transportation
20 from the mill to the grower?

09:11AM

21 A From the feed mill to the grower.

22 Q What is the tonnage capacity of those feed
23 trucks?

24 A I don't know.

25 Q And what is the typical tonnage capacity of a

09:11AM

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1 litter hauling truck, one transporting litter out of
2 a watershed?

3 A The numbers I've seen are 23 to 26 tons.
4 That's for hauling loose litter.

5 Q And this may sound simplistic, and it probably 09:12AM
6 is, but would it not be true that the average mile
7 per gallon consumed by a hauling truck would vary
8 with the weight that's on that truck, less fuel
9 efficiency when you are pulling more weight, do you
10 not, than when you are pulling less weight? 09:12AM

11 A There are some slight differences, yes.

12 Q Did you take those into consideration?

13 A I just simply looked at the truck hauling cost
14 they report per ton cost. They report mileage
15 driven, and I put that on a per mile basis, which 09:12AM
16 would be per mile per ton to see if it was way out
17 of line with the assumptions I've made about the
18 litter hauling costs, and it was not. That's all I
19 did with it.

20 Q What about the University of Arkansas crop 09:13AM
21 cost budgets; what did you look at there? Strike
22 that. What were the months that you looked at for
23 Agri Stats?

24 A It was the first and the last of the series.
25 It's my understanding it was the first and the last 09:13AM

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1 and, as I recall, it was April '06 and November '07.

2 Q Thank you. Now, what was it that you looked
3 at regarding University of Arkansas crop cost
4 budgets?

5 A I went back and tried to find some older ones 09:13AM
6 and found the one for 2007 budget, which was done in
7 '06 for rice, and then I looked at fertilizer,
8 relooked at fertilizer application rates for other
9 delta crops.

10 Q For what purpose? 09:14AM

11 A Well, the Carreira study, where they set up a
12 big optimization model to look at hauling waste out
13 of the IRW, found that all went to rice and not to
14 cotton or corn or so forth, and I just wanted to
15 refresh my memory about the rates of application on 09:14AM
16 those other crops to see if, you know, it was close
17 or far removed from the rice rates.

18 Q To determine whether there may be markets in
19 east Arkansas for land application of other crops
20 than rice? 09:14AM

21 A Yes.

22 Q Any other purpose?

23 A No.

24 Q What were your conclusions in that regard?

25 A Nothing surprising there. Corn is an 09:15AM

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1 intensive user of nitrogen, and the P and K
2 application rates are comparable, if not higher,
3 than rice. Soybeans, they generally apply no
4 nitrogen because it's a leguminous crop and fixes
5 its own nitrogen. So nitrogen in poultry waste
6 would not have value applied to soybeans. Sometimes
7 they apply a little starter nitrogen.

09:15AM

8 Q What about phosphorus; would it have value to
9 soybeans?

10 A Yes.

09:15AM

11 Q I butted in. You were getting ready to talk
12 about some other crop, too. Corn?

13 A Soybeans, grain sorghum, cotton, and I don't
14 recall all the numbers but certainly corn, grain
15 sorghum and cotton -- well, corn and grain sorghum
16 are intensive users of nitrogen. They have pretty
17 high application rates for nitrogen. As I recall,
18 the P rate was similar to rice, and on some of them
19 the K application rate was even higher than on rice.

09:16AM

20 Q Is it your opinion or impression that all of
21 these crops that you just mentioned could benefit
22 from chicken litter?

09:16AM

23 A That is generally -- that is generally
24 consistent with lots of research done in land grant
25 universities up to a point, but the Carreira study

09:16AM

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1 found that the optimal use was on rice, so that
2 would be the best use of it, and then corn or cotton
3 somewhat behind rice, and either because of location
4 in the delta or --

5 Q Have you determined -- excuse me. Go ahead. 09:17AM

6 A And soybeans, which would be much further down
7 because they simply don't need the nitrogen, or if
8 they do, it's just a starter shot of applied
9 nitrogen.

10 Q Did you reach any conclusions regarding 09:17AM

11 whether there's market resistance of any kind in
12 east Arkansas to the use of chicken litter?

13 A I did not research that. The Arkansas ag
14 economists have looked into that and done surveys,
15 and when the surveys were done, they found some 09:18AM
16 resistance.

17 Q And which studies are you referring to?

18 A I don't recall the specific ones.

19 Q Can you take a look and tell me right now what
20 University of Arkansas study you're talking about? 09:18AM

21 A The Carreira, Goodwin and Hamm 2006 article is
22 one of those, and in a way the Guru and Goodwin 2004
23 article touched on it. The Parker study looked at
24 it for a different region.

25 Q What year was Parker? 09:19AM

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1 A '04.

2 Q Any others?

3 A I think there's others in the documents I
4 produced but I don't specifically recall them.

5 Q Dr. Taylor, did you conduct your own 09:19AM
6 investigation or are you relying on the work of
7 others in regard to this issue of potential market
8 resistance?

9 A It's something I've talked with scientists
10 about on and off for an extended period going back 09:19AM
11 long before I became involved in this litigation.

12 Q Have you talked to Sheri Herron about these
13 issues?

14 A I have not.

15 Q Do you know who she is? 09:19AM

16 A BMP?

17 Q Yes, sir.

18 A I know of her. That's all.

19 Q And do you know they're facilitating the
20 hauling of probably the most export of chicken 09:19AM
21 litter from the IRW than any other entity; are you
22 aware of that?

23 A I have seen the numbers for BMP exports and
24 for George's. I've not seen others.

25 Q Do you know BMPs facilitates the hauling for 09:20AM

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1 export hauling for all of the defendants in this
2 case; are you aware of that?

3 A That is my understanding.

4 Q Okay, or many of the defendants in this case?

5 A Uh-huh. 09:20AM

6 Q So they're numbers, in quote, would be
7 incorporated into BMP's numbers; is that true?

8 A I don't know. The numbers I saw were from
9 another expert's report, and they reported BMP and
10 they reported George's. I don't recall whether the 09:20AM
11 George's numbers were included in the BMP numbers or
12 not.

13 Q Have you conducted any sort of a study
14 regarding the George's export activities?

15 A I have not. 09:21AM

16 Q Do you know who their markets are?

17 A I do not.

18 Q Do you know anything at all about the George's
19 export, litter export history?

20 A The history I recall is from the data I just 09:21AM
21 mentioned that showed for both of them in like '03
22 or '04. The first year of numbers that I saw, it
23 was a fairly small percent of the total waste
24 generated in the IRW, and for '06, which I think, as
25 I recall, was the last year it was up near 20 09:21AM

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1 percent.

2 Q Do you know anything, Dr. Taylor, about the
3 logistical complexity of exporting litter to east
4 Arkansas?

5 A Well, as indicated by the Carreira study, you 09:21AM
6 need a central collection point, and then you would
7 haul it over, possibly go ahead and haul it over to
8 the delta near where it would be used, and then
9 you'd unload it and then the applicator truck would
10 load it up and go apply it, so -- 09:22AM

11 Q Hub and spoke?

12 A I have not looked at the technology of that.

13 Q But what you are describing is a hub and spoke
14 concept; right?

15 A Oh, okay. For -- I thought you meant the 09:22AM
16 spreader.

17 Q No.

18 A Couldn't make the connection there. Yeah,
19 there would be a central hub and spokes going out to
20 individual growers that would be a collection point 09:22AM
21 in the IRW and then possibly another hub and spoke
22 in the delta farmland area.

23 Q Have you conducted any sort of a study or
24 reached any conclusions regarding the cost
25 efficiencies attendant to handling litter twice or 09:22AM

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1 three times as opposed to directly hauling from the
2 house to the ultimate end user?

3 A In the Carreira study -- I want to refer to it
4 as Goodwin. The Carreira study, you know, they have
5 cost in for loading and unloading and cleaning and 09:23AM
6 storage in a hoop building and unload litter to a
7 spreader and application and disking and all of
8 that. It seems to be a very thorough study.

9 Q Just refer to the page of your report that
10 you're looking at. 09:23AM

11 A It's Table 2, Page 36.

12 Q So Table 2 on Page 36 is lifted from the
13 Carreira Goodwin study and placed in your report; is
14 that true?

15 A That is correct. 09:23AM

16 Q Is it also true that you don't know whether
17 any of the integrator defendants in this case
18 utilize that model in transporting litter out of the
19 IRW?

20 A I don't see the connection with this model and 09:24AM
21 litter transporting.

22 Q I thought that's what we were talking about.
23 My question to you is this --

24 A Ask again, please.

25 Q Okay. It is true that you don't know whether 09:24AM

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1 any of the integrator defendants in this case or
2 BMPs, Inc., utilize the H. L. Goodwin model in Table
3 2 as the means to transport litter out of the
4 watershed to its end user?

5 A That is correct. 09:24AM

6 Q You do not know?

7 A I do not know.

8 Q So you do not know whether the Goodwin model
9 on Table 2 is actually used in the real world?

10 A I do not know if the system they set up -- you 09:24AM
11 call it a model.

12 Q I'm sorry, I thought you called it a model.

13 A Model has a different meaning -- many
14 different meanings.

15 Q That's for sure. We now agree on one thing. 09:25AM

16 A Okay. I do not know if the system they have
17 in mind here, including office and scales and the
18 infrastructure and in your words hub and spoke, is
19 exactly what or similar to what BMP does.

20 Q Okay. Now, you testified, Dr. Taylor, that 09:25AM
21 since the PI hearing, you've looked at contracts, ag
22 economic studies and near studies. Let's take those
23 one at a time. What contracts have you looked at
24 since the PI study?

25 A Willow Brook only. 09:26AM

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1 Q Okay, and that's per your previous testimony
2 just a few minutes ago?

3 A Yes.

4 Q What ag econ studies have you looked at since
5 the PI hearing? 09:26AM

6 A I went back and looked at the ones that I
7 cited in the May report, and the -- that's --

8 Q Okay. Without looking at the May report right
9 now, we're talking about 3 or 33 studies? If
10 there's just a few, let's talk about what they are 09:26AM
11 right now. If there's a huge number, then I don't
12 want to do that.

13 A I certainly went back and looked at the
14 Carreira study that I used information from, and
15 there are a couple of other studies by the 09:27AM
16 University of Arkansas ag economist that I looked
17 at, and there was a USDA report, a big thick one,
18 that had one page in it that gave a hauling cost for
19 litter. I looked at that, and there's a Carreira, I
20 think it's Carreira. It's the Arkansas ag econ 09:27AM
21 group study of using litter on cotton that I have
22 looked at, and I looked back at the Oklahoma State
23 study by Stoecker and others for the ESW where they
24 provided estimates of litter transportation costs.

25 Q Okay, and was the end purpose of this exercise 09:28AM

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1 on your part to provide you sufficient information
2 to opine as to what I think you called the costs
3 that the companies have avoided historically over
4 the years by not hauling litter out of the
5 watershed; is that true? 09:28AM

6 A Yes.

7 Q Any other purpose for the -- your perusing
8 these studies?

9 A No, not that I can think of.

10 Q All right. Let's start in with my hen 09:28AM
11 scratchings. Go to Page 2, please, if you would of
12 your report, Doctor. For your information and the
13 information of the other attorneys in the room, I'm
14 going to start working through your report asking
15 questions about things that -- 09:29AM

16 A Okay.

17 Q -- I decided I wanted to ask questions about.
18 Paragraph 5 on Page 2 you talk about early in your
19 professional career you conducted substantive
20 research on plant nutrients as water pollutants. I 09:29AM
21 think we went into that in your previous testimony,
22 but it's easier for me to ask these questions again
23 than it is to, quite frankly, go all the way back
24 through your testimony.

25 A Okay. 09:29AM

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1 Q Tell me -- give me the nickel tour of what it
2 was and when you did it in this regard.

3 A Finished up my PhD at the University of
4 Missouri in 1972 and was hired at the University of
5 Illinois as a post doc on a Rockefeller Foundation 09:29AM
6 grant on nitrogen as an environmental quality
7 factor. There was a brother or sister grant to
8 Cornell that dealt a lot more with other nutrients,
9 and we worked together a lot. So I was a post doc
10 for two years. The project continued for a while, 09:30AM
11 but then I moved to a tenure track assistant prof
12 position.

13 Q So is it true that early in your career
14 beginning in 1972 through 1974 while at Mizzou that
15 you were looking at plant nutrients as potential 09:30AM
16 sources of water pollution?

17 A Not so much at Mizzou. My dissertation was on
18 integrative test management, but I worked full time
19 on this interdisciplinary project on nitrogen as an
20 environmental quality factor. 09:30AM

21 Q Between what year and what year?

22 A '7 -- starting in '72 and I'm not sure when
23 the project actually ended, '75, '76, somewhere in
24 that range.

25 Q Have you been directly involved in any other 09:31AM

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1 plant nutrient studies since 1974, '75?

2 A While at Texas A & M -- I went to Texas A & M
3 in 1976 and was there until '80. I did very limited
4 work with or talked to agronomists about the on-farm
5 economics of fertilization. From there went to 09:31AM
6 Montana State and got a lot of their field data
7 looking -- so I could look at the economics of
8 on-farm fertilization. Went back to Illinois in '85
9 and worked with agronomists some on economics of
10 fertilization, on-farm fertilization, and in '88 09:31AM
11 went to Auburn.

12 Q And what involvement have you had with plant
13 nutrients while you've been at Auburn?

14 A My involvement with plant nutrients has been
15 varied. Part of it has been discussions with 09:32AM
16 Alabama NRCS on nitrogen and phosphorus as
17 pollutants or potential pollutants connected with
18 poultry industry primarily in north Alabama, and
19 then worked with a plant pathologist and another
20 group who is developing green pesticides, but it 09:32AM
21 also involves fertility work in -- I call them
22 potions. He combines urea with some other
23 ingredients, if you want to view it that way.

24 Q You're not an agronomist?

25 A No, sir. 09:33AM

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1 Q You're an ag economist?

2 A That's correct.

3 Q And the work that you've done in agronomy,
4 interdisciplinary work as you described it, has been
5 as part of a team where agronomists were doing their 09:33AM
6 thing and you, as an ag economist, were doing your
7 thing; is that true?

8 A Usually interdisciplinary means working closer
9 than that. Multidisciplinary is where an ag
10 economist goes and gets information from an 09:33AM
11 agronomist. My work early at Illinois was truly
12 interdisciplinary. After that it's more
13 multidisciplinary. The work just on the on-farm
14 economics of fertilization has been to get their
15 field data where they apply different rates and then 09:34AM
16 look at yield and then estimate what's called a
17 production function, a relationship between yield
18 and nutrients, and based on that estimate, calculate
19 the most profitable fertilization rate for a farmer.
20 The work with the plant pathologist with potions is 09:34AM
21 much more interdisciplinary.

22 Q Let me try to get at this another way. Are
23 you contending you're qualified to give opinions in
24 this court regarding the issue of plant nutrients
25 being a source of water pollution? 09:34AM

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1 A No.

2 Q Okay. Strike all those questions I asked
3 previously. If you look at Paragraph 8 on Page 3,
4 Doctor.

5 A Okay. 09:34AM

6 Q You get into the relationship between
7 integrators and growers; is that true?

8 A Yes.

9 Q You state that integrators generally own or
10 control the breeding flock, hatcheries, chicks, 09:35AM
11 assignment of baby chicks to growers, feed mills,
12 feed ingredients, et cetera, and you state that
13 integrators also dictate specifications for grow-out
14 houses, equipment and location of grow-out

15 facilities, and thus poultry waste generation is 09:35AM
16 also fully controlled by the integrators. Are you
17 ascribing bad faith or malevolence to any of the
18 integrator defendants in this case in terms of that
19 relationship between them and the growers?

20 A There's always a potential for that, but I'm 09:35AM
21 not ascribing it to them.

22 Q Okay. So it won't be your testimony at the
23 trial of this case that any of these integrator
24 defendants have, quote, abused, end quote, that
25 relationship; is that true? 09:35AM

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1 A I'm not sure about that. That's -- that
2 question covers a lot of ground.

3 Q It's intended to.

4 A Okay. Ask the question again, please.

5 Q Will you attempt to testify at the trial of 09:36AM
6 this case that any of the integrator defendants in
7 this case have abused their relationship with those
8 contract growers who grow birds for them?

9 A I will testify that they have tried to shift
10 risk associated with waste to growers as is 09:36AM
11 reflected in recent contracts compared to older
12 contracts. I'm not sure the word abuse fits. I'm
13 saying I will testify that the integrator has
14 monopsony or oligopsony any power over growers, but
15 that doesn't require abuse either. 09:37AM

16 Q And what you're referring to, Doctor -- I
17 think in your report you look at contracts 15, 20
18 years ago, for instance?

19 A Some less than that.

20 Q That perhaps do not address the disposition of 09:37AM
21 poultry litter versus newer contracts, which do
22 address the disposition of poultry litter; is that
23 true?

24 A With the exception of the Willow Brook
25 contracts, I think the latest one was '01 or '02 but 09:37AM

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1 did not address it, but generally the contracts by
2 the defendants do -- the recent ones do address
3 responsibility and in one case ownership of poultry
4 litter. Fifteen years is not exact because some
5 were further back and some more recent when they
6 started shifting.

09:38AM

7 Q But what you're describing is a trend?

8 A It is a trend, yes.

9 Q Now, let's move away from contracts and what

10 they say to what actually happens and has happened

09:38AM

11 historically. You'll agree with me that even in

12 those days where the contracts did not specifically

13 address the disposition of chicken litter, in fact,

14 the disposition was up to the grower, and it was

15 presumed between the parties that the growers owned

09:38AM

16 the litter; isn't that true?

17 MR. RIGGS: Object to the form.

18 A I don't know what was presumed.

19 Q Why don't you know that?

20 A I have no way of -- you know, it appears to me

09:38AM

21 that -- well, there are legal issues there that --

22 I'm not an attorney.

23 Q Well, but the truth of the matter is, that

24 reaching back into time, back, for instance, into

25 the '70's, it's true that regardless of what the

09:39AM

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1 contract may have said or not said, that it was the
2 grower who was responsible for disposition of the
3 chicken litter clear back then, regardless of what
4 the contracts said; true?

5 A From an economist perspective, back then the 09:39AM
6 grower was free to do whatever they wanted to with
7 the litter.

8 Q Yes, sir, and that's consistently been the
9 case since, let's say, the '70's, I'm just picking a
10 time in history, to the present, regardless of what 09:39AM
11 the contract said or did not say; isn't that true?

12 A That the grower -- I'm not sure how the ESW
13 settlement figures in to your question.

14 Q The what; the what settlement?

15 A The Tulsa settlement. 09:40AM

16 Q Oh, okay. Eucha-Spavinaw?

17 A Yeah. ESW for short.

18 Q But other than that, I'm right, aren't I?

19 A It has generally been left up to the grower to
20 dispose of it. 09:40AM

21 Q Now, in Paragraph 9, in the middle of that
22 paragraph on Page 3 you state that integrator
23 representatives, paren, service technicians, closed
24 parens, typically visit each grow-out house at least
25 weekly to check on and supervise the grower's care 09:40AM

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1 of flocks and check on litter waste -- strike that.
2 Check on litter, waste and dead birds. Do you see
3 where I'm reading?

4 A Yes.

5 Q Now, what evidence do you have that 09:41AM
6 integrators' service technicians check on litter
7 when they arrive at the farm for their typically
8 weekly visit?

9 A I don't know that I have evidence per se in
10 this case, but generally grower representatives, if 09:41AM
11 there is a problem with litter, too wet or potential
12 health issues or other things, then they make strong
13 recommendations or dictates to the growers on what
14 they'll have to do with that if it affects bird --
15 if they think it affects bird performance. 09:41AM

16 Q All right. You're not talking about checking
17 on the disposition of litter then; you're talking
18 about the litter that's in the house?

19 A The litter in the house and what needs to be
20 done with it in the house to take it out, change it, 09:42AM
21 whatever.

22 Q Wet litter can and does produce ammonia?

23 A Uh-huh.

24 Q Which is harmful -- can be harmful to the
25 health of the birds; is that true? 09:42AM

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1 A Right, and I think there's some other
2 potential health issues.

3 Q Bird health, not human health?

4 A Bird health. Well, some maintain that there
5 are health issues for the grower that goes into the 09:42AM
6 house but I'm not --

7 Q But you're not maintaining that here in this
8 case?

9 A No, no.

10 Q And the next word that you use is waste. 09:42AM

11 A Uh-huh.

12 Q What did you mean by the use of the word waste
13 in that sentence?

14 A Just the waste from the bird, the feces and
15 all of that. Waste, generally used litter, waste. 09:42AM

16 Q What is it that the service technicians
17 supervise in regard to waste as you use it in this
18 sentence?

19 A On getting it out of the house.

20 Q I don't know. I'm asking you what you mean. 09:43AM

21 A That's my answer. That's what -- they deal
22 with litter, waste or whatever is in the house, and
23 if they think it affects bird performance, then they
24 make recommendations or dictates for the grower to
25 do something with it to get it out of the house and 09:43AM

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1 to make whatever changes they deem appropriate.

2 Q How do you know what you just said is true?

3 A In this particular case, I don't know, but I
4 know from talking to growers and a lot of them, even
5 the service representatives or technicians, whatever 09:43AM
6 you want to call them, once they visit the house,
7 they have a handwritten form where they -- kind of a
8 checklist they go down.

9 Q But you don't know in this particular case the
10 extent to which service technicians supervised, 09:44AM
11 quote, waste, end quote; true?

12 A I have not looked at any of those documents
13 that I can recall.

14 Q And will you agree with me that there's 168
15 hours in a week? 09:44AM

16 A Yes.

17 Q And will you agree with me that typically,
18 typically a service technician might be on the farm
19 maybe 30 minutes to an hour of that week?

20 A Yes. 09:44AM

21 Q And will you agree with me that for the other
22 167 hours of the week, that it's the grower and his
23 or her birds?

24 A Depends. With some of the new high tech
25 houses, the temperature in the house can be 09:44AM

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1 monitored by the service rep sitting at his or her
2 desk back at the office.

3 Q It's true that with some of the modern houses,
4 which are computer operated, that the grower could
5 almost go on vacation for five weeks and come back 09:45AM
6 and find a good flock of birds?

7 A No.

8 Q That's not true?

9 A That's not true, no. He'd find a bunch of
10 dead birds. 09:45AM

11 Q I took a shot at it anyway.

12 MR. BURNS: We have some that try.

13 MR. BASSETT: Talking about the legal
14 profession.

15 Q On Page 4 at the very top you quote somebody 09:45AM
16 named J. J. Molnar, M-O-L-N-A-R?

17 A Yes.

18 Q Do you know J. J. Molnar?

19 A Yes, I do.

20 Q And how do you know -- is it Mr. Molnar? 09:45AM

21 A Doctor.

22 Q How do you know him?

23 A For my 20-year tenure at Auburn, he has been
24 in the Department of Ag Economics and Rural
25 Sociology. He's a rural sociologist. He's now 09:46AM

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1 assistant or associate dean of the college over
2 international programs. He's had that position for
3 the last year or so, but during the most -- during
4 the first 15 years of my tenure, I was physically
5 and administratively in the Department of Ag
6 Economics and Rural Sociology. Administratively I'm
7 just in the College of Ag.

09:46AM

8 Q Utilization of the words, quote, comprises the
9 command and control structure that specifies the
10 grower's production process, end quote, are his
11 words, not your words?

09:46AM

12 A That is his words and his co-author.

13 Q Well, do you adopt those words as your own,
14 command and control structure?

15 A Those are not words I use commonly, not in --
16 I don't recall using those in connection with the
17 poultry industry.

09:47AM

18 Q Dr. Taylor, do you give credit to those who
19 choose to grow chickens for a living for having the
20 ability to make their own decisions as to what they
21 want to do in life?

09:47AM

22 A To some extent.

23 Q To what extent do you not?

24 A For somebody considering becoming a contract
25 poultry producer, they're looking at an economic

09:48AM

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1 life on a house of 20 to 30 years as I've stated,
2 wood frame house. That's a very long-term
3 investment, and growers come into that with a lot of
4 trust. The potential exists that once they become a
5 grower and have invested in the houses and
6 generally, usually obtain big loans, then they can
7 be at the mercy of the integrator, and it's that
8 that concerns me.

09:48AM

9 Q And is it your belief that a grower doesn't
10 understand that relationship going in?

09:48AM

11 A I think most of them do now, but the industry
12 has changed, and I'm not sure they always understood
13 that, but each grower is different.

14 Q Okay. In what way has it changed and how
15 recently?

09:49AM

16 A There's just been a lot more information that
17 have come out in the last ten years on contract
18 poultry production, what's involved. As I have
19 stated in other reports, my opinion, based on what
20 economic information has been available
21 historically, is that the growers got a competitive
22 or fair return on their investment up until
23 somewhere in the mid '90's, and at that point
24 economics changed where they didn't look so good.

09:49AM

25 Q Do you believe that today a typical grower is

09:50AM

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1 making money or losing money?

2 A That is not a precise concept in the field of
3 economics. That's ground we've plowed before.

4 Q We have, and I don't want to spend three hours
5 doing it again. 09:50AM

6 A Okay. The Oklahoma State budgets, the most
7 recent one, shows that if a grower gets 7.50 an hour
8 and no benefits, they have a loss over the period
9 they looked at, which means that in fact they're
10 getting less than 7.50 an hour for their labor, no 09:50AM
11 benefits, nothing for bearing various risks. So to
12 use your phrase, in some sense contract production
13 puts money in their pocket, but I'm saying it's not
14 putting enough in their pocket to be a competitive
15 return. 09:51AM

16 Q Okay, and you're right, we have plowed that
17 grounds many times. I don't want to get into it
18 again.

19 A Good.

20 Q Except in September of next year. 09:51AM

21 A Okay.

22 Q Doctor, somewhere in your report you opine
23 that the average length of the relationship between
24 a grower and an integrator is 16 years.

25 A I don't opine that. That's a result of a 09:51AM

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1 survey.

2 Q Okay, and I think you were saying that in the
3 sense that per your testimony that you just gave,
4 that the average life of a house is 20 to 30 years;
5 is that true? 09:52AM

6 A Yes, economic life.

7 Q Economic life. So I guess your point, tell me
8 if I'm right or wrong, is that the economic -- it
9 takes longer to pay for the economic life of a house
10 than the length of the relationship between the 09:52AM
11 house owner, the grower and the integrator; is that
12 your point?

13 MR. RIGGS: Object to the form.

14 A My point is that it is usually a long-term
15 relationship and, you know, what I've stated is that 09:52AM
16 the house can have an economic life of 20 to 30
17 years. The equipment in the house has a shorter
18 life, and when they first start out with 90 to 100
19 percent loan at the bank, they're struggling to make
20 those payments, and some of them try to put 09:52AM
21 everything they can into paying off the loan
22 thinking that they will make good money, your
23 phrase --

24 Q Uh-huh.

25 A -- later on, but what has typically happened 09:53AM

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1 is about the time they get the debts paid off, then
2 they've had to upgrade the house and equipment,
3 which means another loan, which gets them back into
4 a debt cycle.

5 Q But at the end of that 16-year period, it 09:53AM
6 would be typical that they would sell the farm and
7 realize some cash; is that true? I mean you're not
8 just saying -- I'm going to let you answer in a
9 second. You're not just saying at the end of 16
10 years, the value is gone; I mean there's value there 09:53AM
11 to be sold to a subsequent purchaser; isn't that
12 true?

13 MR. RIGGS: Object to the form.

14 A Well, there are several issues. Again, the 16
15 years was a result of a survey. Length of tenure, 09:53AM
16 you know, they may exit; they may in a few cases
17 switch over to another integrator. There's not much
18 public information on that. It may not be a pure
19 real estate transaction. It may be a family-type
20 change, you know, from mom and dad to the sons, and 09:54AM
21 actually that's why the Alabama guy called me. He
22 got worked up because he wanted to change it over to
23 his son and from his Social Security number to his
24 son's, and he said that they would only do it if
25 they made upgrades, and I got off on a tangent. 09:54AM

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1 Q Uh-huh.

2 A And I lost track of your question.

3 Q The point that I'm trying to have you agree
4 with is that at the end of a 16-year relationship
5 between an integrator and a grower per the survey 09:55AM
6 you mentioned in your report, that that doesn't mean
7 the value is at zero, value of assets are not at
8 zero?

9 A It can be at zero if the integrator wants it
10 to be because the way the contracts are generally 09:55AM
11 structured, if the grower puts the house on the real
12 estate market, then the contract does not go with it
13 unless the integrator approves it, and so if the
14 integrator doesn't approve it, those facilities have
15 very limited value. 09:55AM

16 Q Can you cite any instances, any factual actual
17 instances where any of the integrator defendants in
18 this case have refused to enter into a contract with
19 the purchaser of a poultry farm?

20 A No, I cannot. I have no information on that. 09:55AM

21 MR. ELROD: Let's go ahead and take a break
22 then.

23 VIDEOGRAPHER: We're now off the Record.

24 The time is 9:55 a.m.

25 (Following a short recess at 9:56 a.m., 09:56AM

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1 proceedings continued on the Record at 10:04 a.m.)

2 VIDEOGRAPHER: We are back on the Record.

3 The time is 10:04 a.m.

4 Q Doctor, if you'd turn to Page 5 of your
5 report, and looking at paragraphs -- well, that 10:04AM

6 entire page basically. I want to get into the whole
7 monopsony, oligopsony control, mercy of the

8 integrator, to use your words, issues. How many of
9 these integrator defendants compete for growers in

10 Benton County, Arkansas? Let me restate that. How 10:05AM
11 many of them operate in Benton County, Arkansas?

12 A I do not know exactly. I would guess most of
13 them.

14 Q How many of them operate in Washington County,
15 Arkansas? 10:05AM

16 A My guess is most of them.

17 Q How many of them operate in Delaware County,
18 Oklahoma?

19 A I don't know.

20 Q How many of them operate in Adair County, 10:05AM
21 Oklahoma?

22 A I don't know. I have seen -- I think I've
23 seen maps showing -- identifying location of growers
24 for the different integrators, but I don't recall a
25 pattern of that. 10:06AM

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1 Q Do you know how many different square feet of
2 chicken houses have been transferred from one
3 integrator to the other, say, within -- during the
4 last two years?

5 MR. RIGGS: Object to the form.

10:06AM

6 A I do not. It's not public information.

7 Q Do you know whether there has been a
8 substantial movement of growers from one integrator
9 to another in the last couple of years in this area
10 of the world?

10:06AM

11 A Seems like at the last deposition or maybe at
12 the PI hearing you brought up the case where a block
13 of them had shifted.

14 Q Okay. From Simmons to Tyson?

15 A That's what I recall.

10:06AM

16 Q Well, it's true, is it not, that under the
17 terms of the contracts you've looked at, especially
18 ones that are a longer term and not flock to flock,
19 that the grower has the right to move from one
20 integrator to the other but the integrator may not
21 have the right to terminate a grower?

10:07AM

22 A Well, let me back up and state that the longer
23 term contracts, the three or seven years, still the
24 ones I've seen only provide for one flock, so they
25 cover a long time period, but as I read it as an

10:07AM

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1 economist, it does not commit the integrator to
2 provide, you know, four to six flocks every year for
3 the -- whatever length of time is stated.

4 Q But in reality, that's what happens; isn't
5 that true? 10:07AM

6 A So far.

7 Q And my previous question, isn't it true that
8 under the contracts you've looked at, the grower --
9 I'm sorry, the integrator doesn't have the right to
10 terminate the grower except under specified 10:08AM
11 circumstances, like, for instance, just not showing
12 up for work, but the grower has total freedom of
13 movement from one company to the other; isn't that
14 true?

15 A I'm not sure they would. Again, I'm not an 10:08AM
16 attorney. Just taking it at face value, I don't see
17 that the grower can move from one integrator to
18 another during, let's say, the seven-year period.
19 They would have to wait under the end of that
20 period. 10:08AM

21 Q Is that your opinion?

22 A As an economist, but I'm not opining on legal
23 issues.

24 Q So you don't know one way or the other whether
25 a Simmons grower who wakes up one morning and 10:08AM

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1 decides they want to approach Tyson Foods and switch
2 companies has the legal ability to do that?

3 A I would really have to go back and look at the
4 specific wording on the grower's rights during that
5 seven-year period versus the integrator's rights as 10:09AM
6 stated in the contract. That's not a part I looked
7 at carefully in this case.

8 Q Why wouldn't that issue bear on questions like
9 control, monopsony, oligopsony, freedom of movement?

10 A Well, it does bear, but generally when a 10:09AM
11 grower shifts from one integrator to another or puts
12 it on the real estate market, they have to make
13 expensive upgrades, which becomes a barrier to
14 switching.

15 Q And do you know whether that -- what you just 10:09AM
16 described has actually been the case in the IRW in
17 the last two years where growers have switched from
18 one integrator to another, specifically Simmons to
19 Tyson?

20 A I do not know about that or the many years 10:10AM
21 before that.

22 Q Will you agree with me that in order for this
23 standard relationship between integrators and
24 growers to work, that the growers as a community,
25 setting aside you're always going to find 10:10AM

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1 disgruntled people, are you not?

2 A Oh, yeah.

3 Q Okay. Describing the system of growers as a
4 community, that the growers have to be content and
5 happy? 10:10AM

6 A That they have to be?

7 Q Yes, sir, content and happy.

8 A I don't know if anybody is always content and
9 happy in their jobs, whether there's monopsony power
10 exerted or not. 10:11AM

11 Q But you and I discussed this a little bit
12 before when you were on the witness stand I think
13 and I asked you whether it was a relationship of
14 trust and you said it was; correct?

15 A The grower places a lot of trust that the 10:11AM
16 integrator will come through for them, give them
17 raises in the future to offset either cost of
18 living, inflation or for more expensive equipment
19 upgrades and so forth.

20 Q Are you willing to acknowledge that there 10:11AM
21 could also be or has been pressure on the
22 integrator, economic pressure on the integrator to
23 raise grower pay based on the need for square
24 footage and the freedom of movement of a grower to
25 another company? 10:11AM

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1 A What I know generally is that adjusted for
2 inflation, grower pay per pound of bird raised has
3 basically been flat for the past 20 or so years, a
4 little bit of a sawtooth effect because the
5 increases only come every three to five years. 10:12AM

6 There have been slight increases in production per
7 square foot, but the cost of houses and especially
8 equipment in those houses has gone up faster, and
9 that's where the squeeze has occurred.

10 Q Do you know whether or not any of the 10:12AM
11 integrator defendants in this case have raised
12 grower pay as a result of competition between these
13 companies for growers?

14 A I do not, but I want to point out the word
15 competition has many different meanings to an 10:12AM
16 economist.

17 Q I'm just using the plain old every day
18 non-economic question of whether integrator
19 defendants in the IRW are competing for growers
20 because they need more square footage. 10:13AM

21 A The terminology point I want to make to
22 disconnect it with poultry is that you may only have
23 two firms and an industry and in some sense they may
24 be competing with each other, but that doesn't mean
25 that the outcome measures up to the true competitive 10:13AM

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1 standard used by mainstream economics.

2 Q Okay. Now, can you answer my question? Do
3 you know whether --

4 A I do not know.

5 Q Would it surprise you to find out that 10:13AM
6 Simmons, for instance, has had to raise grower pay
7 because it was losing growers to Tyson?

8 A Could be.

9 Q If that were true, would it also not be true
10 that that fact would indicate a competitive 10:14AM
11 marketplace for the services of growers?

12 A Not necessarily in terms of the norm of true
13 competition and, moreover, you just referred to the
14 last two years and not the twenty or so previously.

15 Q Now, back to the other question I asked you -- 10:14AM

16 A Okay.

17 Q -- will you agree with me that in order for
18 this system to work, that growers have to be content
19 and happy? We sort of did a -- you moved to the
20 side on me in terms of answering and you said nobody 10:15AM
21 is ever content and happy.

22 A I'm trying to interpret content and happy.

23 Q That's because I'm using plain words instead
24 of economic words.

25 A Okay. Well, I'm going to go back to economic 10:15AM

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1 words. They may be somewhat content, but that
2 doesn't mean they're earning a competitive return
3 for what they bring to the partnership or to the
4 contract relationship.

5 Q But isn't -- but you would not demean somebody 10:15AM
6 who chose to raise chickens for a living, would you,
7 sir? You don't strike me as being that kind of a
8 person.

9 A Did you say graze or raise?

10 Q Raise. 10:15AM

11 A No.

12 Q Okay, and you'll agree with me that people,
13 whether they be chicken growers or anyone else in
14 our economy, have the right to decide for themselves
15 what they want to do for a living, don't they? 10:15AM

16 A Yes.

17 Q All right.

18 A In general.

19 Q I think you'll also agree with me that you
20 have no evidence that growers becoming growers for 10:16AM
21 the first time -- I think we've already gone through
22 this -- that they understand what the system and the
23 process is going in, don't they?

24 A I'm not sure they fully understand it.

25 Q All right. 10:16AM

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1 A And especially the economics of it.

2 Q Paragraph 17 on Page 6, you state that many
3 integrators have different contracts with different
4 complexes, even adjacent complexes?

5 A Yes. 10:16AM

6 Q Where, who? Any of these integrator
7 defendants you talking about in the IRW?

8 A I do not have the defendants' contracts for
9 other complexes outside the IRW. I have some
10 contracts that just showed up in the mail like one 10:17AM
11 we've already talked about. I have some older ones
12 that the Iowa Attorney General posted on his
13 website, and I have some covered by confidentiality
14 in other litigation, and without talking about
15 specific companies or revealing what is 10:17AM
16 confidential, there are differences in contracts
17 from complex to complex.

18 Q In the IRW?

19 A No. I'm saying you go from the IRW to --

20 Q Tell me -- tell me where and who there are 10:18AM
21 differences in contracts for different complexes. I
22 assume we're talking about broiler growers versus
23 broiler growers versus broilers growers, for
24 instance?

25 A Yes. 10:18AM

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1 Q Okay, and are you telling me that there are
2 chicken complexes in the United States, regardless
3 of who the integrator is, where a broiler grower
4 will receive different pay under the terms of their
5 contract from another broiler grower?

10:18AM

6 A I'm saying if you take Integrator A and
7 Integrator A has two complexes, one, IRW and one
8 just pick any other area, there may be differences
9 in those contracts.

10 Q Who; who does that?

10:18AM

11 A I'm not going there because what I know is
12 covered by confidentiality, and there's nothing in
13 this case -- since I do not have contracts for other
14 complexes, I cannot analyze that.

15 Q All right. I have no problem with you're not
16 going there as long as you try to go there as -- as
17 long as you don't try to go there at trial. Do you
18 agree with me you're not try to, quote, go there,
19 end quote, at trial?

10:19AM

20 A For the defendant companies in this watershed?

10:19AM

21 Q Yes, sir.

22 A Not unless I'm shown other contracts.

23 Q That you haven't seen yet?

24 A That I haven't seen yet.

25 Q You seem to be critical in Paragraph 18 of

10:19AM

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1 Gary Murphy's statement in his deposition that
2 Packers and Stockyards pretty well dictates that we
3 have to treat all growers the same?

4 A Yes.

5 Q Is it your position that Simmons, my client, 10:20AM
6 would have the legal ability under the PSA to pay
7 ten different broiler growers under ten different
8 payment schemes operating out of the same complex if
9 it chose to do so?

10 A I am saying that as I understand the Packers 10:20AM
11 and Stockyard Act as it relates to poultry, USDA
12 does not have the authority to come in and say you
13 can't do that. Then from the legal system, the
14 courts have been all over the place in
15 interpretation of the Packers and Stockyard Act. So 10:20AM
16 from a legal standpoint, I don't know.

17 Q Okay. Are you aware that Simmons has some
18 what we call company-managed farms?

19 A Most of the integrators do.

20 Q Have some? 10:21AM

21 A Yes.

22 Q But most of the integrators, the vast majority
23 of their broilers are grown by independent contract
24 growers; isn't that true?

25 A Right. Usually the integrator will have some 10:21AM

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1 research houses and then some grow-out houses but
2 primarily the contract growers --

3 Q Are you aware, sir, that Simmons settles its
4 company-managed farms totally separately from
5 settlement of its contract growers? 10:22AM

6 A I was not aware of that for Simmons, but
7 that's the case for other integrators I'm familiar
8 with, generally the case. There's some small
9 differences in how that's calculated, but usually
10 they're separate. 10:22AM

11 Q And that's fair, isn't that true, to settle
12 them differently, separately?

13 A Growers consider it to be fair.

14 Q Okay. What is the basis of your opinion
15 stated in Paragraph 21 that the notion that the PSA 10:23AM
16 prevents them from negotiating with individual
17 growers is pretext?

18 A That is just my opinion.

19 Q Do you have a basis for that opinion?

20 A Based on the fact that there are -- there's a 10:23AM
21 wide range of contracts in the hog industry, almost
22 every kind studied in business class. To my
23 knowledge USDA has not raised an issue over that.
24 There are different kinds of contracts in the cattle
25 industry, but this keeps popping up in the poultry 10:23AM

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1 industry and, therefore, I concluded that in my
2 opinion it's pretext.

3 Q The structure of the cattle industry is
4 totally different from the structure of the poultry
5 industry, isn't it? 10:24AM

6 A And they're both totally different from the
7 structure of the hog industry but hogs is now closer
8 to poultry than cattle.

9 Q On Page 7, the continuation of Paragraph 22,
10 and we've touched on this earlier, you state 10:24AM
11 contract growers make significant long-term
12 investments in housing, and in bold print you say,
13 one of the striking features of production contracts
14 is that although growers and integrators typically
15 have long-term relationships, contracts are usually 10:25AM
16 written for short durations.

17 A Yes.

18 Q Assuming that to be true --

19 A Okay.

20 Q -- and not arguing over the word short and the 10:25AM
21 word long --

22 A Okay.

23 Q -- doesn't that indicate happiness and
24 contentment and good faith, the fact that there are
25 long-term relationships between a grower and an 10:25AM

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1 integrator even though the, quote, contracts, end
2 quote, are written for a shorter period of time?

3 A It may indicate they're happy, or it may
4 indicate that the grower feels he or she has no way
5 out. So I just mean that to me, as an economist, 10:25AM
6 that is a striking feature.

7 Q And have you spoken to any growers who grow
8 for any of the companies who are defendants in this
9 case?

10 A As far as I know, I have not talked to any 10:25AM
11 growers in the IRW.

12 Q Then it would be true that you don't know
13 whether there is a feeling on the part of any grower
14 who grows with any of the defendants in this case
15 that they feel like there's no way out? 10:26AM

16 A No, and I wouldn't know how to uncover their
17 true thoughts on that.

18 Q In the last sentence of Paragraph 22 you
19 state, quote, even though there are several
20 integrators in the IRW, the defendant integrators 10:26AM
21 maintain monopsony or oligopsony power over their
22 contract growers extending to waste and dead bird
23 disposal, period, end quote.

24 A Yes.

25 Q Tell me what you mean by that. 10:26AM

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1 A I mean that simply because the grower has such
2 an investment in houses and equipment, that
3 generally if the integrator chooses not to deliver
4 birds except for the first flock, they don't have to
5 and if the integrator decides to put a new contract 10:27AM
6 feature in, whatever it may be, can apply waste and
7 dead bird disposal, then the grower has little
8 viable economic option other than to accept it or go
9 bankrupt.

10 Q But per your previous testimony, Dr. Taylor, 10:27AM
11 you're unable to provide the court or jury in this
12 case the name of any contract grower who one of the
13 integrator defendants has denied birds?

14 A I have simply not analyzed that. I don't have
15 the data to analyze it. 10:28AM

16 Q Let's talk about dead bird disposal for a
17 second. How are dead birds disposed of? Tell me
18 the ways.

19 A Well, there's --

20 Q In the IRW. 10:28AM

21 A I do not know now. You know, there have been
22 different technologies through time. Going back in
23 time, some of them were thrown out, and that's
24 probably why disposal of dead bird requirements are
25 in some of the early contracts. They've gone to 10:29AM

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1 composting the dead birds. They've gone to freezers
2 and others, but I do not know what the dominant
3 arrangement in the IRW is.

4 Q Let me ask you this exotic legal question. Do
5 you know whether it's possible to pass title in 10:29AM
6 something that's dead?

7 A I do not have opinions on legal matters,
8 exotic or not.

9 Q What's the source of your information in
10 Paragraph 26 that the average size of a grower's 10:30AM
11 operation in the IRW is approximately three to four
12 houses?

13 A That is true nationally from different surveys
14 that have been done, and seems like I saw something
15 in one of the other expert reports that it was -- an 10:30AM
16 average or a median was three or so, between three
17 and four, but I can't point specifically to that.

18 Q And will you agree with me that the typical
19 three to four house -- in the typical three to four
20 house operation in the IRW, that one of the spouses 10:30AM
21 will work off the farm?

22 A That is now typical.

23 Q Okay. You also agree with me that it is more
24 typical than not that the three to four-house farm
25 will have cattle? 10:30AM

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1 A Typical.

2 Q Do you know the average mama cow herd size in
3 this part of the world?

4 A You asked me that question before, and I think
5 I guessed at a hundred but I have not looked that
6 up, but they're a fairly small operation. That is
7 available from census data but I have not looked it
8 up.

10:31AM

9 Q Do you know whether any of the independent
10 contractor growers who grow with these integrator
11 defendants in the IRW has ever chosen to lay out in
12 the winter and not raise birds in the winter because
13 of energy costs?

10:31AM

14 A I do not know. Wouldn't be surprised if they
15 asked.

10:32AM

16 Q Would you be surprised if what?

17 A I would not be surprised if they had asked the
18 integrator if they could lay out for a winter, but I
19 do not know.

20 Q Would you be surprised if any have told the
21 integrator that they're going to lay out for the
22 winter?

10:32AM

23 A I wouldn't be surprised that you could find
24 someone that said that. I don't know if it's
25 dominant or not.

10:32AM

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1 Q In Paragraph 33 you state that farmers become
2 contract growers only with approval of an
3 integrator.

4 A Yes.

5 Q That's not surprising, is it? 10:32AM

6 A No, given the structure of the industry.

7 Q And in Paragraph 34 you state that once waste
8 is removed from the poultry house, it no longer has
9 a role in the defendants' poultry production
10 process? 10:33AM

11 A Yes.

12 Q That's because it's used by people other than
13 the integrators; true?

14 A Just doesn't go back into an integrated system
15 like if the integrator grew corn and soybeans, then 10:33AM
16 they would take the litter to grow corn and soybeans
17 to make feed for the broilers. It's just not a part
18 of the integrator's production system.

19 Q And that's because the poultry litter is used
20 by people other than the growers -- I mean other 10:33AM
21 than the integrators?

22 A It doesn't have to be that way.

23 Q But it is that way?

24 A It is that way.

25 Q And in Paragraph 35, you state that the circle 10:34AM

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1 that integrators draw around their feed mill for
2 contract growers is typically 25 to 50 miles, is
3 that true, on Page 10?

4 A Yes.

5 Q And what is your source of that information? 10:34AM

6 A It's common throughout the industry, and I've
7 cited studies here. Agri Stats also reports the
8 hauling, just average hauling distance for feed and
9 for birds ready for processing, and it fits into
10 this 20 to 50-mile range. 10:35AM

11 Q What's the citation -- I don't see any
12 citation of authority for the words typically 25 to
13 50 miles. There's no footnote note.

14 A I cited the Tyson web page.

15 Q If I go to the Tyson -- 10:35AM

16 A Kirk Houtchens' deposition. Though that's
17 disappeared from the Tyson web page. I show I
18 downloaded it in '05. I printed it, and when I went
19 back to look, it disappeared.

20 Q So your testimony is that in 2005, the Tyson 10:35AM
21 web page said that they would not go outside 25 to
22 50 miles from their feed mill for contract growers;
23 is that your testimony?

24 A My testimony is exactly what it said.

25 Normally the grower farms are required to be within 10:36AM

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1 30 to 40 miles of the feed mill and the complex,
2 Paragraph 38.

3 Q What about paragraph -- I'm looking at
4 Paragraph 36 where you say typically 25 to 50 miles.
5 I'm asking you for a citation of authority. 10:36AM

6 A In Paragraph 38 I've given two, the Tyson web
7 page, which is 30 to 40, Kirk Houtchens' 50 miles,
8 and I vaguely remember a USDA report quite awhile
9 back that even had 20 miles, and I came up with the
10 20 to 50-mile range. It is not a precise distance. 10:37AM

11 Q Now, that notion, whatever the width of the
12 circle is, is because of the efficiencies required
13 to raise birds profitably; is that true?

14 A That is based on their desire to minimize
15 transportation costs. 10:37AM

16 Q Which have become even more and more important
17 in the last --

18 A Their out-of-pocket transportation costs.

19 Q Which has become even more important in the
20 last six months to a year, hasn't it? 10:37AM

21 A They've certainly gone up, the transportation
22 costs.

23 Q Who told you in Paragraph 39 that poultry feed
24 constituted the major source of phosphorus imported
25 into the IRW? 10:38AM

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1 A Nobody told me that. That was just based on
2 working on plant nutrients over my professional
3 career and the way in which fertilizer
4 recommendations are typically made by extension
5 services, especially the phosphorus recommendation. 10:38AM

6 Q Have you now told me all of the bases for your
7 statement?

8 A It's just my experience and knowledge of the
9 phosphorus issue and nothing specific to this case,
10 other than not much -- not many field crops are 10:39AM
11 grown where it is transported out of the watershed,
12 where the crop is hauled out of the watershed.

13 Q Most of the food consumed by human beings in
14 the IRW is imported to the IRW from outside
15 locations; true? 10:39AM

16 A Yes.

17 Q Did you take that into account?

18 A I did not.

19 Q Paragraph 42, you state that in your opinion
20 integrators, including these defendants, have used 10:40AM
21 their economic control over growers to attempt to
22 shift environmental costs and health risk costs from
23 themselves to growers. Is it your assertion that
24 there have been meetings, communications, things of
25 that nature, information passed between these 10:40AM

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1 integrator defendants where they agreed among
2 themselves that they would use their economic
3 control to attempt to shift environmental costs?

4 A I do not have any evidence of explicit
5 collusion, tacit collusion or whether there was no 10:40AM
6 collusion.

7 Q That was a great answer. In fact, if they did
8 that, that would be violative of antitrust laws of
9 the United States, wouldn't it?

10 A Maybe. 10:41AM

11 Q Same question regarding health risk costs.
12 You know of no meetings, confabs, agreements,
13 anything like that; right?

14 A Right.

15 Q Same with Paragraph 44 where you use the words 10:41AM
16 increasing effort by the defendants to explicitly
17 shift to contract growers the environmental costs
18 and health risk costs. Again, you know of no
19 meetings, agreements, communications where any of
20 these integrator defendants sat down and said, 10:41AM
21 here's what we're going to do, guys; right?

22 A I do not have any information on collective
23 action or lack of that.

24 Q In Paragraph 45, you -- and its subparagraphs,
25 you address a lot of contracts with these growers -- 10:42AM

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1 between the growers and the integrator defendants;
2 correct?

3 A Correct.

4 Q And you begin citing that the -- you cite that
5 there began appearing, perhaps in the 1990's,
6 depending on the company, contract language with the
7 growers that addressed health and environmental
8 regulations and the requirement that the growers
9 comply with health and environmental regulations in
10 the disposition of chicken litter.

10:42AM

10:42AM

11 A The exact wording differs from contract for
12 contract, but that's the main theme.

13 Q The theme is somewhere that in the '90's there
14 started --

15 A Wording.

16 Q -- appearing in these contracts wording where
17 the growers were required to dispose of chicken
18 litter in accord with rules and regulations;
19 correct?

20 A Various rules and regulations and laws.

10:43AM

21 Q Now, sir, is that not a good thing?

22 A It's a good thing to follow the laws and
23 regulations.

24 Q You're not criticizing from a social
25 responsibility standpoint that that's responsible

10:43AM

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1 behavior on the part of the companies?

2 A I don't know that I'm testifying on social
3 responsibility issues.

4 Q Good. In Paragraph 59 you recite that the
5 USDA for the purposes of the map on that page --

10:44AM

6 MR. RIGGS: John, did you say 59 or 1?

7 MR. ELROD: 59 on Page 24.

8 Q You state that the USDA for purposes of the,
9 typo, the above map, 455 broilers constitute an
10 animal unit as does a single breeding cow or bull.

10:45AM

11 A Yes.

12 Q Why is that?

13 A I'm just citing why they did, but it's
14 primarily because the chicken weighs a few pounds
15 and a bull weighs 1,200 pounds, but it also involves
16 waste production per pound and some other factors,
17 but I don't know the exact formula. It's laid down
18 in those reports, the reasoning for that.

10:45AM

19 Q And then you state that both Benton and
20 Washington Counties in Arkansas are identified in
21 the above maps as having over 25,000 animal units
22 from which manure is recoverable. Would you explain
23 those numbers? I do not understand that.

10:45AM

24 A The 25,000 animal units -- what they define as
25 recoverable comes primarily from confined feeding

10:46AM

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1 operations. Historically there were some hogs
2 there. Most of those have gone out. So this is
3 primarily poultry, and to just simplify it, if we
4 had only poultry confined and that's the only way to
5 recover from their standpoint, it would be 25,000
6 times 455 would be the number of broilers in Benton
7 and Washington Counties for --

10:46AM

8 Q 25,000 times 455 or 25,000 divided by 455?

9 A 25,000 times 455 would be the number of
10 broilers because an animal unit is 455 broilers by
11 their calculation.

10:46AM

12 Q Okay. Paragraph 60 on Page 25, the last
13 sentence you state that the five-county area had an
14 increase of broiler numbers of over 50 percent from
15 1987 to 2002, and then you state, which largely
16 accounts for the increase in excess phosphorus as
17 shown on the USDA maps. Now, the last part of that
18 sentence is your opinion; correct?

10:47AM

19 A Well, it's based on their methodology for
20 calculating excess phosphorus.

10:47AM

21 Q But it's your opinion that the increase in
22 chicken production, quote, which largely accounts
23 for the increase in excess phosphorus as shown on
24 the USDA maps, end quote, is true; that's your
25 opinion; right?

10:48AM

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1 A That is simply a reflection of the USDA
2 calculations.

3 Q Well, the USDA doesn't opine that the reason
4 for purported increases in excess phosphorus as
5 shown in the USDA maps is because of an increase in 10:48AM
6 poultry production; USDA doesn't say that, does it?

7 A No, but their excess phosphorus went up
8 because broilers went up.

9 Q I understand. That's your opinion; correct?

10 A It's my interpretation of their data and 10:48AM
11 methodology. If you want to call it an opinion,
12 that's okay.

13 Q In Paragraph 61 when you say, in my opinion
14 integrators have been well aware for about two
15 decades that runoff and leaching of phosphorus from 10:49AM
16 land application of poultry waste is of
17 environmental concern in several areas of the U.S.,
18 including the IRW. Are you not stepping outside of
19 your realm of expertise in making that statement?

20 A I do not have any direct evidence that the 10:49AM
21 integrators were aware of it, and I stated this as
22 an opinion, but given all that's been going on at
23 the university and NRCS and USDA, you know, it's
24 been conceivable that they didn't know about it.

25 Q And assuming that, quote, they, end quote, 10:49AM

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1 didn't know about, quote, it, end quote, over the
2 past two decades, can you tell the court and jury
3 what, for instance, Simmons Foods has done in
4 reaction to that knowledge?

5 A Nothing other than to say that they're 10:50AM
6 participating in BMP for the last few years.

7 Q And that's all you know that Simmons has done
8 in reaction to that knowledge?

9 A As far as I know, yes.

10 Q On Page 33, Paragraph 64, in bold print there 10:50AM
11 are the following words, quote, farmers' perception
12 of manure management has evolved from crop
13 fertilization to waste disposal, end quote. Do you
14 see where I'm talking about?

15 A Yes. 10:51AM

16 Q Are those your words?

17 A Those are apparently Parker's words as quoted
18 by Carreira, Young, Goodwin and Wailes.

19 Q In Paragraph 65 I think you -- you talk about
20 baling. 10:52AM

21 A Yes.

22 Q What do you know about the status of litter
23 baling?

24 A I know that the Arkansas ag economists have
25 looked into it and have done some economic analysis, 10:52AM

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1 but they state that it is still unproven or not
2 completely developed technology.

3 Q Paragraph 68 you state that, two-thirds of the
4 way down, Dr. Taylor, quote, therefore, it is --
5 therefore, there is zero gross value to additional P 10:52AM
6 applied either as poultry waste or as commercial
7 fertilizer, end quote?

8 A Yes.

9 Q Are you not stepping outside your areas of
10 expertise by making that statement? 10:52AM

11 A I don't think I am.

12 Q You're not an agronomist?

13 A But I've extensively analyzed the economics of
14 fertilization.

15 Q Your undergraduate degree is in what? 10:53AM

16 A My junior college degree is just in
17 agriculture. My undergraduate degree is
18 agricultural economics.

19 Q And your masters is in what?

20 A Combined econ, ag econ department. It's 10:53AM
21 really ag econ but diploma says econ.

22 Q And your PhD is in what?

23 A Ag economics.

24 Q Now, let's focus on Paragraph 72 for a few
25 minutes. You agree that historically it has not 10:54AM

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1 been profitable to haul litter long distances
2 because commercial fertilizer was much cheaper than
3 now?

4 A Relative to transportation costs then.

5 Q As we sit here today, what's the cost of a ton 10:54AM
6 of urea?

7 A I've done some web searches and searches on
8 USDA websites, and I have not found any current
9 information on urea costs. I know it's all gone up.

10 USDA usually reports it at spring planting time, and 10:54AM
11 their April number is all I have, but I know it's
12 gone up dramatically. I've heard the DAP has gone
13 up to a thousand dollars, but I haven't heard any
14 solid number on urea but it's gone up substantially.

15 Q It's at least \$700 a ton? 10:55AM

16 A That sounds about right.

17 Q Okay, and that price would include the
18 counties within the IRW?

19 A Pretty much uniform price in the United
20 States. 10:55AM

21 Q And DAP is diammonium phosphate?

22 A Phosphate.

23 Q And that's mined, a mined product, M-I-N-E-D?

24 A The phosphorus is mined, and it's -- I don't
25 know the technology. They put some urea in it to 10:55AM

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1 stabilize it or something like that, and so it has
2 some nitrogen fertilizer value, along with the
3 phosphorus, but it's mined primarily in Florida.

4 Q Okay, and in order to get it here, you have to
5 transport it by barge or railroads to the Port of 10:56AM
6 Catoosa, for instance; is that right?

7 A I don't know how it's transported from
8 Florida.

9 Q There would be transportation costs attendant
10 to getting it from Florida to Adair County, 10:56AM
11 Oklahoma; true?

12 A Correct.

13 Q And its cost in Adair County, Oklahoma is
14 about a thousand dollars per ton?

15 A That's what Gordon Johnson said. 10:56AM

16 Q And three to four years ago would have been in
17 the range of \$200 a ton?

18 A I give the statistics back here somewhere.

19 Q Where are they?

20 A One of the tables, Table 4. That's Appendix 10:56AM
21 Table 4.

22 Q What am I supposed to be looking for? Okay.
23 It's under Appendix A or where? Didn't you number
24 these pages?

25 MR. RIGGS: Under Appendix C, I think. 10:57AM

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1 MS. XIDIS: It's C.

2 A It's almost at the end of your document, about
3 a half a dozen pages back.

4 Q All right. I've got it. It's headed Appendix
5 Table 4, fertilizer prices reported by USDA spring 10:57AM
6 of indicated year?

7 A Uh-huh.

8 Q Okay. We're talking phosphates, not
9 phosphorus; is that true?

10 A DAP, right, super phosphate. 10:57AM

11 Q And that's what we're talking about in chicken
12 litter, too, is phosphates, not phosphorus; correct?

13 A That's science stuff, so I'm not an expert in
14 that area.

15 Q So commercial phosphates have gone up from 10:58AM
16 \$222 a ton in 1998 to over \$800 a ton in 2008
17 according to this chart.

18 A Right. Probably a thousand now.

19 Q And urea has gone from 183 to 552 during that
20 same period of time? 10:58AM

21 A Yeah, and I'll accept your current number of
22 700 as being close.

23 Q Okay. Now, when you -- Doctor, when you look
24 at the typical farming operations in the IRW --

25 A Uh-huh. 10:58AM

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1 Q -- let's see if we can -- we may have done
2 this at trial on the PI, but let me revisit this
3 issue. Let's see if we can agree on what that
4 typical farming operation might look like. I think
5 we've already said there might be three or four 10:59AM
6 chicken houses; right?

7 A Right.

8 Q And that -- and maybe 100 head of mother cows;
9 right?

10 A Right. 10:59AM

11 Q And, what, a couple hundred acres of land; is
12 that fair?

13 A That's close, maybe smaller than that but
14 okay. It's not 2,000.

15 Q And one of the spouses is probably going to 10:59AM
16 work off the farm; right?

17 A Correct.

18 Q And the -- in order to feed those cows, you
19 have to raise forage; correct?

20 A There are other ways of feeding them, but that 10:59AM
21 is an important component.

22 Q And in order to feed them forage, and the way
23 our agriculture works here is that hay and forage
24 will be grown typically at the farm of the person
25 who has got the chicken houses and the cattle; 10:59AM

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1 correct?

2 A Uh-huh, yes.

3 Q It's baled for winter use?

4 A Yes.

5 Q And then they're obviously grazing animals; 11:00AM
6 right?

7 A Right.

8 Q In order to get maximum forage production, you
9 have to fertilize; true?

10 A The word maximum bothers me. That's why I 11:00AM
11 hesitate because to an economist, you want to
12 maximize -- have the fertilizer rate that maximizes
13 profit, which generally is less fertilizer than what
14 maximizes yield.

15 Q From a -- but if you were the owner of that 11:00AM
16 farming operation, you're wanting to maximize yield,
17 are you not?

18 A I want to maximize profit, which is different.

19 Q Okay, and that's going to require
20 fertilization in order to maximize profit because 11:00AM
21 you want to raise more forage; correct?

22 A Maybe, not necessarily.

23 Q And the choice of whether to fertilize or not
24 fertilize and the extent to which one might
25 fertilize, at least with commercial fertilizer, is 11:00AM

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1 totally up to the farmer; right?

2 A Subject to various laws and regulations.

3 Q Well, are there laws attendant to the use of
4 commercial fertilizer in northeast Oklahoma and
5 northwest Arkansas? 11:01AM

6 A I can't think of any right now.

7 Q But there are laws in regard to the
8 utilization of chicken litter as a fertilizer for
9 forage; correct?

10 A Yes. 11:01AM

11 Q Okay, and will you agree with me that from a
12 pure efficiency standpoint, it makes more sense to
13 apply phosphorus and nitrogen that comes out of the
14 rear end of a chicken right next door than it is to
15 bring urea or phosphate from Florida by barge and 11:01AM
16 railroad trains and then by truck to enter some
17 store on Highway 412 in Adair, Oklahoma and then go
18 get it in a buggy and spread that on your land?

19 A In terms of on-farm economic efficiency, which
20 I equate with profit maximization, if the soil test 11:01AM
21 is already up to the 65 level, the Oklahoma State
22 agronomists say there is no yield response. If
23 they're applying any kind of phosphorus to a field
24 that has an STP greater than 65, they're purely
25 wasting their money because they're not getting 11:02AM

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1 anything back for applying the phosphorus part of
2 chicken litter or waste or DAP or whatever.

3 Q Okay, but if you've got -- with the commercial
4 fertilizer at the cost that we've just discussed --

5 A Uh-huh. 11:02AM

6 Q -- even if you're not going to get maximum
7 utilization of your phosphorus, typically you're
8 going to need the nitrogen from the litter, are you
9 not?

10 A You need the nitrogen in the litter -- you may 11:02AM

11 need the nitrogen or -- in the litter or from
12 commercial fertilizer, but you do not need the P.

13 Q But the point is that in order -- that the
14 typical farmer making his or her own -- in this area
15 of the world making his or her own nutrient 11:03AM

16 decisions to the extent the law permits them to make
17 those decisions is going to find the utilization of
18 chicken litter much more economically efficient than
19 urea at \$700 a ton and phosphorus -- commercial
20 phosphates at a thousand dollars a ton? 11:03AM

21 MR. RIGGS: Object to the form.

22 Q It's just cheaper?

23 A That is something I have not carefully
24 analyzed. I've not carefully analyzed on-farm
25 economics, but it's quite possible that with the 11:03AM

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1 high fertilizer prices, the grower would be better
2 off selling the litter for use outside the watershed
3 and taking some of that money and buying urea
4 because on those fields there's no need for P or K.

5 Q But you've not analyzed that?

11:04AM

6 A Not carefully.

7 MR. ELROD: Okay. Let's take a break.

8 VIDEOGRAPHER: We're now off the Record.

9 The time is 11:03 a.m.

10 (Following a short recess at 11:04

11:04AM

11 a.m., proceedings continued on the Record at 11:15
12 a.m.)

13 VIDEOGRAPHER: We're back on the Record.

14 The time is 11:15 a.m.

15 Q Dr. Taylor, I'd like to talk to you for a few
16 minutes about this unjust enrichment concept and
17 we'll focus for the moment on Paragraph 72.

11:15AM

18 A Okay.

19 Q It's true that you are relying on the
20 assumptions and results of the 2007 H. L. Goodwin
21 study in reaching your opinions and calculations; is
22 that true?

11:15AM

23 A That is true.

24 Q You conducted no independent study of your own
25 in terms of transportation costs out of the

11:15AM

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1 watershed?

2 A The only independent work I did is to compare
3 their transportation costs to transportation costs
4 in an Oklahoma NRCS bulletin to your experts.

5 Rouser and Dicks had some assumptions to the USDA 11:16AM
6 report that I briefly mentioned before, and seems
7 like there was another one, but I compared their
8 costs to litter hauling costs from other sources.

9 Q And the conclusion you reach in Paragraph 72,
10 based on the H. L. Goodwin study, is that there are 11:16AM
11 no apparent economic barriers to hauling substantial
12 amounts of poultry waste from the IRW to rice fields
13 in Lonoke County, Arkansas; is that true?

14 A Other than the possible acceptance issue we
15 covered earlier. 11:17AM

16 Q And your conclusion in that regard is based
17 solely on the H. L. Goodwin study in 2007; true?

18 MR. RIGGS: Object to the form.

19 A It uses information from the Carreira study,
20 and then I take that back in time. They looked at 11:17AM
21 it as a snapshot in time, and I looked at it going
22 back year by year with available information and,
23 again, compared it to the other hauling cost
24 numbers. Oh, also to haulers Traylor and Langley, I
25 think in their deposition they state cost, and the 11:18AM

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1 cost in the Carreira study are higher, up to a
2 hauling distance of near 400 miles, so I used the
3 high cost estimate.

4 Q But the lynchpin of your opinion is the
5 results of the Goodwin study; you didn't conduct
6 your own independent study; true?

11:18AM

7 A Yes.

8 Q And if it's wrong, you're wrong; isn't that
9 right?

10 A That's true.

11:18AM

11 Q And you didn't look at the George's
12 experience; correct?

13 A Correct.

14 Q You didn't look at the Sheri Herron/BMPs
15 experience; correct?

11:18AM

16 A That is correct, because I have no way of
17 assessing the objectivity of anything I would get
18 out of that.

19 Q And the whole notion that there's been the
20 legal term unjust enrichment for not hauling litter
21 historically and at the present to the extent it's
22 not hauled, again, it is based purely on the
23 accuracy of the H. L. Goodwin study?

11:19AM

24 A With the qualifications and explanations I
25 gave.

11:19AM

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1 Q Okay. In Paragraph 75 and also in -- back in
2 Paragraph 72 you use the words -- you used the word
3 responsibly. You talk about the companies behaving
4 responsibly in 72 by hauling litter and in 75 you
5 talk about, quote, responsibly transporting excess
6 litter out of the IRW; do you see that?

11:19AM

7 A Yes.

8 Q Those are your words; isn't that true?

9 A Those are my words.

10 Q And you are ascribing irresponsibility to the
11 defendants in this case by virtue of litter not
12 historically being transported out of the IRW?

11:20AM

13 A Or in economic jargon, they're not accounting
14 for the external cost associated with the litter
15 that's generated by their operation.

11:20AM

16 Q But you chose to use the word responsibly;
17 correct?

18 A Yes, I did.

19 Q And that's editorializing on your part, isn't
20 it?

11:20AM

21 A They certainly control all of the factors
22 involved and if you want to call it editorializing,
23 okay.

24 Q By your conscious selection of the word
25 responsibly, you are attempting to convey to the

11:20AM

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1 court and jury in this case that these integrator
2 defendants are not responsible companies; isn't that
3 true?

4 A Talking about responsibility in a very
5 narrowly defined way, not in terms of their whole 11:21AM
6 corporate operation.

7 Q Okay, but back to my question, by you
8 consciously choosing to use the word responsibly in
9 this context, you are trying to convey to the court
10 and jury in this case that these defendants have 11:21AM
11 acted irresponsibly; isn't that true?

12 A That is my opinion.

13 Q And your cost avoidance conclusions assume
14 transportation out of litter tonnage at various
15 levels; is that true? 11:22AM

16 A Correct.

17 Q You provided a chart for 50,000 tons, 100,000
18 tons, 150, et cetera?

19 A Where -- yes.

20 Q I'm sorry, on Table 5 on Page 39. 11:22AM

21 A Yes.

22 Q So is that the notion that you are not opining
23 as to the amount of tonnage that should be or should
24 have been historically removed from the watershed;
25 you're providing a range? 11:23AM

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1 A That is correct.

2 Q So what should have been done is not within
3 your realm of testimony in this case?

4 A I was not asked to analyze that.

5 Q And you won't analyze that for trial or offer 11:23AM
6 opinions at trial; is that true?

7 A As far as I know.

8 Q Okay. Dr. Taylor, since I don't have any red
9 pencil marks anywhere else on this report, I'm
10 through. 11:23AM

11 DIRECT EXAMINATION

12 BY MR. BURNS:

13 Q Dr. Taylor, my name is Brian Burns. I
14 represent the various Tyson entities that have been
15 sued in this lawsuit, Tyson Foods, Inc., Tyson 11:24AM
16 Poultry, Inc., Tyson Chicken, Inc., Tyson Breeders,
17 Inc., and Cobb-Vantress. Can we agree that today if
18 I refer to the Tyson defendants or the Tyson
19 companies or just Tyson, I'm collectively meaning
20 all of those? 11:24AM

21 A Yes.

22 Q I think it will save us some time rather than
23 going through individually. We've never met I don't
24 believe?

25 A No. 11:24AM

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1 Q But you have some experience with Tyson; isn't
2 that correct?

3 A And they have experience with me.

4 Q You've --

5 A I didn't pick them, though. 11:24AM

6 Q You have been retained as an expert in cases
7 involving Tyson Foods in the past?

8 A Two cases. The first one was the cattle case,
9 Pickett versus IBP, and my involvement started I
10 think in early '99. The case started in '96, and in 11:25AM
11 '02 Tyson bought into the case, but I was involved
12 as an expert when it was Iowa Beef Packers and then
13 Tyson bought into it.

14 The other one is an east Texas poultry case
15 that out against Pilgrim's Pride as a Packers and 11:25AM
16 Stockyard case, and along the way it was -- and I
17 was involved in just Pilgrim's Pride, and along the
18 way, it was expanded to include antitrust
19 allegations, and they brought Tyson in, but also at
20 that time I said I don't have time for all of this, 11:25AM
21 so my role is pretty limited.

22 Q Your role is more prominent in the Packers and
23 Stockyard portion of that case against Pilgrim's
24 than the later antitrust suit?

25 A Right. As far as I know, the only involvement 11:26AM

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1 in the antitrust part is market definition, and to
2 simplify my testimony, the integrators defined the
3 market for grower services.

4 Q Have you published articles discussing the
5 business practices of Tyson? 11:26AM

6 A I have published articles dealing with the
7 Pickett case.

8 Q In the course of the work that you've done
9 involving Tyson Foods, have you come to any general
10 conclusions as to the business practices of Tyson? 11:26AM

11 A No general conclusion. I've dealt basically
12 with -- it was more IBP's use of what's known as
13 captive supplies to allegedly manipulate the cash
14 market for slaughter cattle.

15 Q You don't have any opinions as to the poultry
16 side of the operation then? 11:26AM

17 MR. RIGGS: Object to the form.

18 Q Well, I can ask a little bit better question.

19 A Okay.

20 Q In the course of the work you've done 11:27AM
21 historically on Tyson, you haven't come to any sort
22 of general conclusions as to the business practices
23 of the poultry side of the business?

24 A Other than it being vertically integrated and
25 having the same, generally the same business model 11:27AM

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1 that the other integrators now have.

2 Q Do you have an opinion as to whether Tyson is
3 a good corporate citizen?

4 A I don't have any reason to think they're
5 generally a bad corporate citizen. 11:27AM

6 Q Do you have any reason to think that Tyson
7 generally conducts its business affairs in an unfair
8 manner?

9 A No, except for the two issues that I've
10 covered, one dealing with the monopsony or 11:27AM
11 oligopsony power over growers, and the -- well,
12 three, and you know, after they bought IBP, then the
13 practice there, and then what's covered in this
14 litigation, but I don't have any ill will towards
15 Tyson. 11:28AM

16 Q This is the second deposition that you've
17 given in this case; is that correct?

18 A Correct.

19 Q Do you recall being asked in the course of
20 that prior deposition if you believed Tyson is a 11:28AM
21 threat to democracy?

22 A I don't know if -- I don't recall being asked
23 if Tyson was a threat to democracy. We had
24 discussions about related issues.

25 Q Okay. I'm going to show you a page from your 11:28AM

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1 deposition transcript, prior deposition transcript.

2 I'm sorry I didn't bring extra copies of this
3 particular document. This is Page 139. Could we
4 mark that?

5 MR. RIGGS: Counsel, can I take just a 11:28AM
6 moment to retrieve it? We had it out and I put it
7 back in a box and I'm not sure I can find it very
8 quickly. It won't take very long I think. What was
9 the page and line?

10 MR. BURNS: I believe it's 138 or 139. 11:29AM
11 A 139.

12 MR. BURNS: Line 12.

13 Q Okay. Can you read that question for me?

14 A Starting at 12?

15 Q Yes, sir. 11:29AM

16 A Do you believe that Tyson is a threat to
17 democracy? Answer: Well, they've been convicted of
18 bribing the Secretary of Agriculture, but aside from
19 that, I don't see that they're a threat to
20 democracy. 11:29AM

21 Q What basis do you have for asserting that
22 Tyson Foods or any of the Tyson entities has been
23 convicted of bribing the Secretary of Agriculture?

24 A That was my understanding that in the Michael
25 Espy case when he was Secretary of Agriculture, 11:30AM

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1 which was ten or fifteen years ago, that Tyson was
2 convicted.

3 Q Do you know for a fact that Tyson was
4 convicted of bribery in that case?

5 A I do not. 11:30AM

6 Q Do you agree with me that prior to accusing a
7 company of a criminal conviction on the Record in a
8 deposition, you might should verify whether that
9 fact is accurate?

10 A I thought it was common knowledge, but if they 11:30AM
11 weren't convicted of bribing per se, then I'm wrong
12 to state that.

13 Q Okay, and you're a professor at Auburn
14 University?

15 A Correct. 11:30AM

16 Q What department are you in?

17 A Administratively I'm in the College of
18 Agriculture.

19 Q Okay.

20 A Tenure at Auburn is only in departments. So 11:30AM
21 my tenure is in ag economics or rural sociology, but
22 for all practical purposes I'm in the college but
23 not a department per se.

24 Q Does Auburn University have a poultry science
25 department? 11:31AM

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1 A Yes, they do.

2 Q And are you a member of that faculty?

3 A No.

4 Q Have you ever taught any poultry science
5 classes?

11:31AM

6 A No.

7 Q Have you ever taught a class that involves
8 on-farm poultry management?

9 A I have not taught any class per se directly
10 related to poultry science.

11:31AM

11 Q Okay. Have you ever been asked to teach any
12 class like that directly related to poultry science?

13 A Have not.

14 Q Have you yourself ever been a farmer?

15 A I grew up on a farm in Oklahoma that I would
16 call more of a hobby farm, and mother was an
17 extension home economist.

11:31AM

18 Q What kind of farming did you do?

19 A Everything.

20 Q Did you have chickens?

11:31AM

21 A We had yard chickens.

22 Q No commercial flock, no chicken house?

23 A No commercial flock. Cattle and hogs
24 commercially.

25 Q Have you ever been employed by a poultry

11:32AM

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1 company?

2 A I have not.

3 Q So your exposure to the poultry industry has
4 come primarily through the retention of you as an
5 expert in litigation and writing and academic 11:32AM
6 pursuits that you've done?

7 A More writing on restoring economic health to
8 contract poultry production, and then the poultry
9 litigation really came into play after that.

10 Q Okay. I'm going to spend a little bit of time 11:32AM
11 going through your expert report.

12 MR. BURNS: Did we mark that as an exhibit
13 in the case? Do you mind marking that as Exhibit 2?

14 Q I may skip around somewhat. Mr. Elrod covered
15 a lot of ground and I may skip around and cover some 11:33AM
16 other things. On Page 3 of your report in Paragraph
17 8, you state that the location of grow-out
18 facilities and, thus, location of poultry waste
19 generation is also fully controlled by the
20 integrators. Can you help me understand what you 11:33AM
21 mean when you say that the integrators control the
22 location of grow-out facilities?

23 A They have to approve the individual or they
24 approve first the individual and if that individual
25 plans on locating facilities far away from the feed 11:33AM

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1 mill, then they simply won't contract with that
2 grower. They find out where the location is and how
3 far it is to a feed mill. In terms of location on
4 the farm itself, the integrator generally has some
5 say over it, but it's more the lay of the land that 11:34AM
6 determines that.

7 Q So would it be fair to characterize your
8 opinion as basically the integrator draws a circle
9 or a radius and determines how far the integrator
10 will travel from the feed mill and will contract 11:34AM
11 with potential growers inside that radius?

12 A There's no bright line but that's the basic
13 idea.

14 Q More or less?

15 A More or less. 11:34AM

16 Q But within that area, if a poultry house were
17 -- a potential house were to be located 25 degrees
18 east of the feed mill or 25 degrees west of the feed
19 mill, you don't have any reason to believe that a
20 poultry company would have a preference, do you? 11:34AM

21 A No.

22 Q And certainly on an individual potential
23 grower's farm, as long as there wasn't some issue
24 such as lack of road access or lack of water supply
25 or something like that, the poultry company wouldn't 11:35AM

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1 care?

2 A Right. They want access and some other --

3 Q Do you know if the poultry companies consider
4 whether a farm also includes pastureland for
5 purposes of litter application? 11:35AM

6 A I do not.

7 Q Okay. On Paragraph 9 on the same page, you
8 state that the company service technicians typically
9 visit each grow-out house at least weekly to check
10 on and supervise the grower's care of flocks and 11:35AM
11 check on litter, waste and dead birds, and Mr. Elrod
12 asked you some questions about this already so I'll
13 try not to belabor the point too much, but I believe
14 your testimony was that checking on the litter
15 consists of checking on the condition of the bedding 11:35AM
16 inside the house?

17 A Right, and whether that affects performance.

18 Q Okay. So the primary concern is whether the
19 litter would be too wet, for example?

20 A Too wet or too much feces or issues like that. 11:36AM

21 Q And based on your understanding of the
22 industry, if the litter was too wet, the service
23 tech might make a recommendation as to what to do
24 about that?

25 A To do a cake-out. 11:36AM

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1 MR. RIGGS: Object to the form.

2 A Cake-out or dry it out or completely remove it
3 and replace it.

4 Q But that recommendation might not be to remove
5 it or replace it; is that correct? 11:36AM

6 A Could be just to dry it out.

7 Q There could be other things that could be
8 done, such as increase the ventilation?

9 A Right.

10 Q Turn up the brooders? 11:36AM

11 A Yes.

12 Q Remove the wet cake?

13 A Right.

14 Q And if a service tech did ask the grower to
15 remove the litter, do you have any information as to 11:36AM
16 whether he would attempt to tell the grower what to
17 do with it?

18 A As far as I know, there's no attempt to tell
19 the grower what to do with it.

20 Q If there's not a specific issue such as wet 11:36AM
21 litter, who determines when to remove litter from a
22 poultry house?

23 A I guess the grower has some latitude in
24 cake-out or when it's completely replaced, but there
25 are differences from one kind of contract to 11:37AM

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1 another, and I don't recall all of them, but I
2 recall in general. I don't know if the same applies
3 to the IRW cases where the integrator actually
4 provided the new litter, and a lot of them where
5 it's up to the grower, so --

11:37AM

6 Q But generally speaking, the grower can decide
7 whether to take his litter out or not?

8 A Within the guidelines established by the
9 integrator.

10 Q Assuming a grower has removed the litter from
11 his house, who decides whether he land applies that
12 or puts it to some other use?

11:38AM

13 A As far as I know, it's the grower.

14 Q Who decides where he land applies it, if he
15 decides to land apply it?

11:38AM

16 A Grower.

17 Q Who decides whether he sells it to someone?

18 A Grower.

19 Q Has it been your experience that growers
20 generally want the litter?

11:38AM

21 A Historically they wanted the litter, but in
22 the areas of the United States where -- that have
23 been identified as having or potentially having too
24 much litter and the high P levels, then it kind of
25 transitions from something that they want very

11:38AM

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1 valuable over to waste disposal but --

2 Q Well, that might be your opinion that it's
3 waste disposal, but apart from concerns raised like
4 litigation -- other than concerns raised in
5 litigation such as this, is it your belief that 11:39AM
6 growers would like to have the use of the litter?

7 A Generally, yes.

8 Q Is it your understanding that growers find
9 value in litter other than just its phosphorus
10 content? 11:39AM

11 A Certainly the nitrogen.

12 Q Are you aware of any soil conditioning
13 properties that growers find in litter?

14 A In general application of litter does improve
15 many characteristics of the soil. That depends -- 11:39AM
16 it's my understanding, and I'm outside my area of
17 expertise, but if it's tilled in, it improves it a
18 lot more than surface application, but there are the
19 soil-improving potential properties of litter.

20 Q When you and Mr. Elrod were discussing the 11:40AM
21 amount of time that service technicians spend on
22 farms, you made reference to some of the high tech
23 controllers that are in poultry houses today and
24 made reference to the notion that a service tech
25 could perhaps monitor conditions remotely? 11:40AM

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1 A Uh-huh.

2 Q Are you aware of that actually happening in
3 this watershed?

4 A No, I don't know the extent to which it goes
5 on. 11:40AM

6 Q Do you have any knowledge whether any of these
7 companies employ that technology at all?

8 A No specific knowledge as it relates to the
9 IRW.

10 Q Okay. On Page 4 at the very top of the page, 11:40AM
11 end of Paragraph 9, Mr. Elrod asked you some
12 questions about the command and control structure
13 that specifies the grower's production process, and
14 I believe you said those were Mr. Molnar's words and
15 not yours? 11:41AM

16 A Correct.

17 Q And those are not words you used?

18 A I cannot recall using those words in this
19 context.

20 Q Do you agree with that characterization? 11:41AM

21 A He's a rural sociologist, and the words have
22 different meaning to him. They're not, again, words
23 I would select for this.

24 Q Why did you put it in your report if they're
25 not words you would -- 11:41AM

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1 A Well, interpreting it in terms of rural
2 sociology terminology, then I agree with it to some
3 extent.

4 Q In Paragraph 12 you make a statement that a
5 person cannot independently raise commercial poultry 11:41AM
6 and have a ready cash market for them. Are you
7 taking the position that there are no cash markets
8 for independently raised poultry?

9 A There are cash markets for organic poultry,
10 cash markets for some other specialty types, but I 11:42AM
11 know of no market and certainly no USDA statistics
12 on a market for this type of commercial bird that
13 the defendants are growing.

14 Q If we could move to Page 6, Paragraph 17, and
15 this is in the context of your belief that poultry 11:42AM
16 integrators use PSA assertions as a pretext to
17 maintain complete contractual control over growers.

18 A Right.

19 Q You make the statement that many integrators
20 have different contracts for different complexes; is 11:42AM
21 that correct?

22 A Correct.

23 Q And Mr. Elrod asked you some questions, and I
24 won't belabor the point, but I think your testimony
25 was that you don't have any evidence in the Illinois 11:43AM

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1 River watershed of contiguous or overlapping
2 complexes with different contracts?

3 A Correct.

4 Q Putting that aside, you're aware, are you not,
5 that different poultry complexes might raise 11:43AM
6 different size birds?

7 A Yes.

8 Q For different end markets?

9 A Yes.

10 Q So, for example, you could have one poultry 11:43AM
11 complex from a company in a geographic region that
12 raises a small bird that goes to a fast food-type
13 market; is that correct?

14 A Right.

15 Q And another that raises a bird that may be two 11:43AM
16 to three pounds larger for a completely different
17 end market; is that correct?

18 A Right.

19 Q You would expect, would you not, that there
20 would be some difference in base pay rate between 11:43AM
21 those two complexes?

22 A Yes.

23 Q You would agree then with me that the fact
24 that two growers are in close geographical proximity
25 to each other is not the sole analysis in 11:44AM

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1 determining whether they should have exactly the
2 same contract or not?

3 A Right. There are other considerations.

4 Q Okay. In Paragraph 18 you quoted Gary Murphy,
5 who represented Simmons Foods, in saying that 11:44AM
6 Packers and Stockyards pretty well dictates that we
7 have to treat all growers the same, and then you
8 went on to question whether USDA or GIPSA has the
9 authority to make such a dictate; is that correct?

10 A That's correct. 11:44AM

11 Q And is it a fair characterization of your
12 argument here that based on the fact that some of
13 the enforcement authority that exists under the
14 Packers and Stockyards administration for livestock,
15 cattle and pigs does not extend to live poultry 11:44AM
16 dealers?

17 A When they added poultry and live poultry
18 dealers, it's my -- to Section 202, it's my
19 understanding that apparently through an oversight,
20 they did not give USDA authority to enforce that, 11:45AM
21 and there have been bills introduced in Congress or
22 farm bill attachments to change that, but I don't
23 know from a legal standpoint.

24 Q You're not of the opinion, however, that the
25 only liability or exposure concern one of the 11:45AM

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1 poultry companies could have is enforcement actions
2 by the agency, and I can ask a more direct question.
3 Can't plaintiffs still sue us for violating the
4 Packers and Stockyards Act even if --

5 A Yes. 11:45AM

6 Q And hasn't that happened numerous times?

7 A I don't know about numerous but it has
8 happened.

9 Q Were you involved in a lawsuit by a group of
10 growers in around the Fort Smith area of Arkansas 11:46AM
11 against OK Foods?

12 A In Oklahoma, yes.

13 Q In Oklahoma, and that case involved fairness
14 claims under the Packers and Stockyards Act, did it
15 not? 11:46AM

16 A Correct.

17 Q And what was the resolution of that case?

18 A It had a long history -- you just want the
19 final result?

20 Q Yes. 11:46AM

21 A I guess it's still dynamic, but a couple of
22 weeks ago the judge let the jury verdict stand and
23 reduced damages from the jury award of 21 million
24 back to my highest amount of 14 million or so.

25 Q So notwithstanding the fact that the agency 11:46AM

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1 lacks authority to dictate that you have to treat
2 all growers the same, a poultry company was hit with
3 ultimately a 14 million dollar verdict for an
4 unfairness claim under this Packers and Stockyards
5 Act? 11:47AM

6 MR. RIGGS: Object to the form.

7 A Under Section 202. I hesitate because of the
8 word unfairness. There's been a lot of legal stuff
9 going --

10 Q Let me rephrase that question then. The 11:47AM
11 poultry company was liable under Section 202 of the
12 Act; is that correct?

13 A Correct.

14 Q The Packers and Stockyards case against
15 Pilgrim's Pride that you were involved in in Texas, 11:47AM
16 were you aware that the USDA took a position in that
17 case as to whether poultry companies could offer
18 different contracts to different growers?

19 A No.

20 Q Were you aware that he filed an amicus brief 11:47AM
21 in that case?

22 A I don't think so.

23 Q Okay. I want to show you what I'd like to
24 mark as Exhibit 3.

25 A I know the attorney had discussions with USDA 11:48AM

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1 people, but I didn't know.

2 Q If I could ask you to -- first, if you could
3 identify this. This says it's a brief for amicus
4 curiae for the United States of America in support
5 of plaintiffs-appellees, Cody Wheeler, Don Davis and 11:48AM
6 Davey Williams, who were the plaintiffs in that case
7 that you previously identify; correct?

8 A That's correct.

9 Q I'd like to ask you to turn to Page --

10 MR. RIGGS: Counsel, before we do that, can 11:48AM
11 you show me a copy of this indicating it was in fact
12 filed? The copy I've got is an unsigned draft.

13 MR. BURNS: I don't --

14 MR. RIGGS: It might or might not have been
15 admitted or filed. 11:48AM

16 MR. BURNS: I don't actually have a
17 file-stamped copy with me. I can certainly
18 supplement with one later.

19 Q Could I ask you to turn to Page 22, please.

20 A 22, okay. 11:49AM

21 Q If you would look at the beginning of that
22 page, beginning with the word similarly on the
23 second line down.

24 A Uh-huh.

25 Q Could I ask you to read that for me? 11:49AM

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1 A Similarly, the arbitrary favoring of a
2 particular grower for other than legitimate business
3 reasons or on terms not made available to other
4 growers might constitute undue or unreasonable
5 preference or advantage or undue or unreasonable 11:49AM
6 prejudice or disadvantage under 7 USC 192, which is
7 Section 202.

8 Q So you would agree with me that the USDA has
9 at least staked out the position that under certain
10 circumstances making a deal available to a grower 11:50AM
11 that's not available to other growers might
12 constitute a violation of Section 192?

13 MR. RIGGS: Object to the form.

14 A It says what it says. The issue is whether
15 they have any authority behind that. 11:50AM

16 Q Okay. In Paragraph 19 of your report you cite
17 some language from Patrick Pilkington and then you
18 assert that that language is contradicted by
19 grow-out deals Tyson executives and insiders had for
20 many years, and I believe you look to some of 11:50AM
21 Tyson's Securities and Exchange Commission filings
22 for that information?

23 A Yes.

24 Q Have you actually reviewed any of those deals?

25 A I have reviewed some similar or some atypical 11:50AM

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1 contracts that Bo Pilgrim had with Pilgrim's Pride,
2 and I did download this SEC document and I looked at
3 it, but I can't recall precisely what is there.

4 Q Well, you're basing your understanding of
5 what's in there on the description of the deal in 11:51AM
6 the SEC document?

7 A Correct.

8 Q And you're assuming -- making certain
9 assumptions about that deal based on just reading a
10 description of it? 11:51AM

11 A Yes.

12 Q And you've not actually read that document?

13 A Read the contract?

14 Q Read the grow-out contract between certain
15 Tyson executives and insiders that you are referring 11:51AM
16 to in Paragraph 19.

17 A I do not recall seeing the contract per se.

18 Q How do you know that it's the same sort of
19 deal that Bo Pilgrim had if you haven't actually
20 read it? 11:51AM

21 A Just the wording and the way pay is
22 calculated, as I recall, is different.

23 Q Well, how is pay calculated under these
24 contracts?

25 A On these? 11:52AM

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1 Q These insider deals we're talking about, how
2 is pay calculated on them?

3 A There are two kinds of insider deals I have
4 encountered, taking this away from just Tyson,
5 but --

11:52AM

6 Q Well, I'm really more interested in these
7 Tyson deals that you've included in your report
8 here.

9 A I'd like to see the SEC document I cited to
10 refresh my memory.

11:52AM

11 Q I don't have that.

12 MS. XIDIS: I can find it. It will take me
13 a few minutes. You might want to move on to
14 something else. It will take me a little time to
15 find it.

11:53AM

16 MR. RIGGS: Want to take a break and we can
17 find it or do you want to --

18 MR. BURNS: How long do you think it will
19 take to track that down?

20 MS. XIDIS: I don't know. I've got to go
21 through the production that was made to you all to
22 look for it.

11:53AM

23 MR. RIGGS: I'm sure we can get it for the
24 witness.

25 MR. BURNS: Why don't we just move ahead,

11:53AM

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1 and I do have some more questions about that that
2 we'd like to ask, but we can probably finish up with
3 everything else and come back.

4 Q Paragraph 21, you testified that Tyson or you
5 included in your report that Tyson has historically 11:53AM
6 had several types of contract for obtaining
7 slaughter cattle, even those coming from the same
8 area or same feed lot?

9 A Yes.

10 Q Did you review any actual Tyson cattle 11:53AM
11 contracts in order to make that statement?

12 A I've certainly reviewed the IBP contracts that
13 Tyson bought into you might say.

14 Q In the past you have?

15 A As part of the Pickett case. 11:54AM

16 Q Did you review that in connection with this
17 lawsuit specifically?

18 A No, I did not go back to those.

19 Q Okay. So you don't have any contracts you can
20 point to today that are different between two Tyson 11:54AM
21 cattle producers?

22 A Don't know if I have Tyson contracts per se.
23 Whatever I have in the cattle case, the details
24 would be covered by confidentiality. Some of it was
25 introduced in five-week trial, but I can't recall 11:54AM

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1 what all was introduced. I wasn't even there for
2 most of it.

3 Q So you don't -- the answer to my question is,
4 you don't have any actual contracts to show us that
5 illustrate that there's differences? 11:54AM

6 A No.

7 Q You reference on page -- the end of Page 8 and
8 beginning of Page 9, which is Paragraph 29 of your
9 report, recent contracts that cover longer time
10 periods? 11:55AM

11 A Yes.

12 Q And you state that Tyson's 2005 contract
13 covers three years; is that correct?

14 A Yes.

15 Q Are you aware that Tyson also offers 11:55AM
16 seven-year contracts to its growers?

17 A I have heard that, but the contracts I had, it
18 was a three-year.

19 Q Okay. Have you reviewed any of the Tyson
20 contracts or any of the other contracts involved 11:55AM
21 with any of these other companies to determine if
22 they provide for out-time pay?

23 A I have not reviewed them looking for that.

24 Q Do you know what out-time pay is; do you know
25 what I mean when I say that? 11:55AM

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1 A When there are not birds there other than the
2 normal cycle.

3 Q So the basic concept of that would be if a
4 chicken company leaves a grower's house empty for an
5 extended period of time and that the company pays 11:55AM
6 that grower some money?

7 A I have not seen such a contract, but I was not
8 looking through there for it. I cannot recall ever
9 seeing one like that.

10 Q You don't know whether they exist in this 11:56AM
11 watershed or not?

12 A I do not.

13 Q Okay. In Paragraph 31 you state, integrators
14 typically mandate specifications for poultry houses
15 and equipment and often require growers to make 11:56AM
16 investments in upgrading equipment and facilities.

17 A Uh-huh.

18 Q Are you aware of a Tyson grower that's been
19 terminated for failing to make upgrades in equipment
20 and facilities? 11:56AM

21 A No.

22 Q Do you know whether Tyson typically does that
23 on a voluntary basis?

24 A I do not know the extent to which it's
25 voluntary encouraged or mandated. 11:56AM

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1 Q Do you know whether Tyson offers premium
2 contracts that pay growers more when they make that
3 sort of an investment?

4 A I'm aware that they pay growers more. There's
5 an issue of whether that's enough more, but that's 11:57AM
6 not part of this litigation.

7 Q Paragraph 33, you state that existing growers
8 who wish to expand production by building additional
9 houses do so only with the integrator's express
10 permission. I assume there that you're not saying 11:57AM
11 that if a poultry grower wanted to go out and build
12 another house on his property, somehow the company
13 would say you can't do that?

14 A I think they have the authority because the
15 contract lays out the number of houses and so forth. 11:57AM

16 Q Tyson contracts lay out the number of houses?

17 A I'd have to go back and look at those details.

18 Q You don't know that to be true then, the Tyson
19 contract specifies the number of houses?

20 A No. 11:57AM

21 Q Okay. Obviously if a grower wanted to expand,
22 he would want to work with the company to make sure
23 he would have enough birds to fill that extra house;
24 right?

25 A Oh, yeah. 11:58AM

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1 Q Do you think that's wrong?

2 A Not necessarily.

3 Q In Paragraph 34 you state that once waste is
4 removed from the poultry house, it no longer has a
5 role in defendants' poultry production process. You 11:58AM
6 acknowledge, do you not, that many poultry growers
7 derive economic value from poultry litter?

8 A Poultry litter has a gross value to growers.
9 I'm not sure about the net value.

10 Q Many growers use it to aid their cattle 11:58AM
11 operations?

12 A May or may not aid it in terms of the
13 economics.

14 Q If that litter was no longer available to many
15 growers, it would affect the overall economic 11:58AM
16 situation on their farm?

17 A It could affect it conceptually positively or
18 negatively.

19 Q In order for them to stay in business, if you
20 took away the poultry litter, the chicken companies 11:59AM
21 would have to pay them more money, would they not?

22 A Since I have not carefully analyzed the
23 on-farm economics of litter application with a high
24 soil P test and other factors, I can't give a
25 definitive answer to that question. It's not 11:59AM

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1 something I was asked to do.

2 Q The defendants' poultry production process --
3 would you agree that anything that affects the
4 amount of money that the defendants have to pay
5 poultry producers in a positive way is important to 11:59AM
6 the companies?

7 A Certainly they look at all of the
8 out-of-pocket costs and the revenue.

9 Q Paragraph 48 on Page 16, you state that
10 complete control over the grower's contract terms 12:00PM
11 and disposition of litter and waste by defendants,
12 Tyson, Cobb-Vantress, Peterson, Simmons, Cargill,
13 George's manifested in the defendants' settlement of
14 the City of Tulsa litigation over the ESW. Do you
15 have any knowledge regarding the discussions that 12:00PM
16 occurred between those companies and their growers
17 about that settlement agreement?

18 A I do not.

19 Q Do you know if the companies had meetings with
20 those growers? 12:00PM

21 A Wouldn't be surprised, but I don't know that
22 they did.

23 Q Do you know if the companies asked the growers
24 to voluntarily agree to that settlement agreement
25 before the companies entered into it? 12:01PM

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1 A I do not.

2 Q Page 26 of your report, Paragraph 62C, you
3 make reference to a 1992 waste management symposia
4 that included a talk by Ellis Brunton.

5 A Yes. 12:01PM

6 Q Did you attend that symposium?

7 A I did not.

8 Q What materials from that symposia have you
9 reviewed?

10 A Well, certainly his printed talk, which I cite 12:01PM
11 here with the Bates number, and I've looked at the
12 agenda for it, but I can't recall what all I've
13 looked at, you know, going back sixteen years.

14 Q There was an E-mail discussion in your
15 produced materials between you and Miss Xidis 12:02PM
16 regarding some transmission of one page of the
17 document. Do you remember those E-mails at all?

18 A Huh-uh.

19 Q I guess I'll just ask the more direct
20 question. When you looked at his talk, did you 12:02PM
21 review the whole thing?

22 A I have all of it, yes.

23 Q Okay.

24 A Or as far as I know, I have all of it. That
25 missing page we resolved. 12:02PM

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1 Q Okay. I'll show you what I'd like to mark as
2 Exhibit 4, which is the Ellis Brunton talk that you
3 made reference to in Paragraph 62.

4 A Yes.

5 MR. RIGGS: Do you have a copy? 12:03PM

6 MR. BURNS: Sorry.

7 Q Have you ever had a conversation with Ellis
8 Brunton?

9 A As far as I know, I've never met him.

10 Q You state that -- in your report that Mr. 12:03PM
11 Brunton discussed corporate environmental commitment
12 and discussed problems with poultry waste, including
13 nutrients?

14 A Yes.

15 Q How do you think Mr. Brunton defined poultry 12:03PM
16 waste?

17 A I don't know without reading to see if he made
18 specific reference to it.

19 Q If I could direct you to Page 26 of this talk,
20 which is Bates numbered NPWMS 00000051, the second 12:03PM
21 paragraph down --

22 A Okay.

23 Q -- can you read me the sentence starting with
24 the same problem.

25 A The same people you mean? 12:04PM

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1 Q Same people. I'm sorry.

2 A The same people that started this industry
3 were faced with the same basic problems we have
4 today, which is what to do with one-third of the
5 live weight of each bird that is considered 12:04PM
6 inedible: Heads, feet, blood, feathers and viscera.
7 What resulted was the inclusion of rendering
8 operations, which may have since evolved into
9 specialized protein and oil recycling operations.

10 Q Okay. Would you agree with me then on Page 27 12:04PM
11 and Page 26, without going line by line, he also
12 spends some time talking about DAF skimmings and
13 sludge?

14 A Yes.

15 Q Which is a processing waste from the plant; 12:05PM
16 correct?

17 A Yes.

18 Q Would you agree with me that the primary
19 thrust of his speech was on processing waste?

20 A Yes. 12:05PM

21 Q Okay. Page 28 of the same speech, the last
22 paragraph on that page --

23 A You want me to read it?

24 Q Yeah. If you could start with the sentence --
25 actually, if you would start with the beginning of 12:05PM

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1 the paragraph, with another area.

2 A Okay. Oh. Another area of future
3 environmental investment that is critical to our
4 industry's survival is that of applied research at
5 the university and government agency levels. 12:05PM

6 Information and knowledge gained from this research
7 is vital to the formulation of the best management
8 practices and areas of litter recycling, dead bird
9 disposal, offal reclamation and processing plant
10 pollution control. 12:06PM

11 Q Do you find it significant that in discussing
12 litter, he used the word recycling as contrasted
13 with dead birds where he used the word disposal or
14 processing plant waste where he used the words
15 pollution control? 12:06PM

16 A What's your question again?

17 Q Do you find it significant that he used the
18 word recycling with regard to poultry litter as
19 opposed to using the words pollution control or
20 disposal? 12:06PM

21 A Possibly.

22 Q Okay. I'd like to turn to the last page of
23 the speech, which is I believe where you pulled the
24 quote that you included in Paragraph 62C from.

25 A Uh-huh. 12:06PM

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1 Q And you quoted Mr. Brunton as saying the total
2 returns on environmental investment are not yet
3 positive; is that correct?

4 A Correct.

5 Q That's not really a very complete statement of 12:07PM
6 what he said, is it?

7 A Let me go through and find that statement.

8 Q It's in the last paragraph.

9 A Okay. Well, it goes on from there.

10 Q It goes on, but there's more before it, too, 12:07PM
11 is there not, in that sentence?

12 A Yes.

13 Q Can you read the whole sentence beginning with
14 in conclusion?

15 A In conclusion, the financial facts are that 12:07PM
16 although the total returns on environmental
17 investment are not yet positive, major strides have
18 been and continue to be made in the poultry industry
19 in deriving value from a variety of byproducts that
20 were once considered waste materials. The bottom 12:07PM
21 line is that profitable poultry operations must
22 continue to invest in progressive environmental
23 practices.

24 Q When you discuss that quote in your report,
25 you included a comment at the end of the last 12:08PM

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1 sentence of Paragraph C that an apparent reference
2 only to the integrator's return is not full social
3 and economic returns?

4 A Uh-huh.

5 Q Are you implying or inferring there that the 12:08PM
6 poultry companies did not consider economic and
7 social returns in deciding whether to make these
8 kinds of investments?

9 A They certainly look at their out-of-pocket
10 expenses, and the environmental side is -- largely 12:08PM
11 does not affect their profit and loss.

12 Q If you were correct and that was the only
13 concern the poultry companies or poultry integrators
14 had there, why is it that Mr. Brunton recommended
15 that the bottom line is that profitable poultry 12:08PM
16 operations must continue to invest in progressive
17 environmental practices?

18 A He did say that, but then he said the
19 universities need to do the research at the taxpayer
20 expense. 12:09PM

21 Q But he said the companies need to invest;
22 correct?

23 A Yes.

24 Q Okay.

25 MR. ELROD: That's what you do, isn't it? 12:09PM

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1 MR. BURNS: The only questions I have
2 remaining relate to that SEC document, so --

3 MS. XIDIS: Want to take a break for a
4 minute?

5 MR. RIGGS: Off the Record for a minute. 12:09PM

6 VIDEOGRAPHER: We're now off the Record.
7 The time is 12:09 p.m.

8 (Following a short recess at 12:09
9 p.m., proceedings continued on the Record at 12:11
10 p.m.) 12:11PM

11 VIDEOGRAPHER: We are back on the Record.
12 The time is 12:11 p.m.

13 DIRECT EXAMINATION

14 BY MR. BASSETT:

15 Q Dr. Taylor, my name is Woody Bassett. I don't 12:12PM
16 know that we've ever met before. I represent the

17 George's defendants in this case, and since I drove
18 all the way over here from Arkansas this morning,

19 I'm determined to ask a few questions even though

20 Mr. Elrod and Mr. Burns have essentially covered the 12:12PM

21 waterfront as to what I wanted to ask, and I'll skip

22 around just a little bit and we'll get through this

23 pretty quickly. Doctor, are you aware of a single

24 grower who contracts with George's who's had his or

25 her contract terminated by George's? 12:12PM

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1 A No. I really haven't looked into those
2 details.

3 Q Do you know of a single grower for George's in
4 the Illinois River watershed or anywhere else for
5 that matter who wanted birds and didn't get them 12:13PM
6 from George's?

7 A I do not.

8 Q There was a little bit of time spent by Mr.
9 Elrod talking about the exportation of litter
10 outside of the Illinois River watershed. Are you 12:13PM
11 aware that George's has done some exportation of
12 litter?

13 A Yes, as we discussed earlier.

14 Q Right, and have you spent any real substantial
15 amount of time looking into that? 12:13PM

16 A I have not.

17 Q All right. Do you know how much litter
18 George's has transported or exported out of the
19 Illinois River watershed in recent years?

20 A There are numbers in one of the other expert 12:13PM
21 reports, but I don't recall exactly how much.

22 Q I guess the question, better question would
23 be, have you looked into that yourself?

24 A I have not. I just looked at the numbers for
25 '03 through '06, and it has gone up, but I don't 12:14PM

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1 remember how much or what percent of George's
2 litter.

3 Q I take it then you wouldn't have any personal
4 knowledge or any idea as to what George's experience
5 has been, either pro or con, with that, with the 12:14PM
6 exportation of litter out of the Illinois River
7 watershed?

8 A I do not have personal experience.

9 Q Now, in Paragraph 6 on Page 2 of your report,
10 you state that you have been retained by the State 12:14PM
11 of Oklahoma to evaluate the relationship between
12 poultry growers and defendant poultry companies.
13 That's part of your statement. Is that true; is
14 that one of the reasons you were retained in this
15 case? 12:14PM

16 A To evaluate the economic relationship between
17 growers and defendant companies.

18 Q Okay. You were hired, though, or retained to
19 evaluate to some degree the relationship that exists
20 between growers and these poultry defendant -- these 12:15PM
21 defendant poultry companies; correct?

22 A Correct.

23 Q All right. Now, Mr. Elrod already I think did
24 a pretty good job of I think covering this, but I do
25 want to ask just a few questions along those lines. 12:15PM

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1 Have you ever talked, sat down with a person, a
2 human being who grows chickens for George's?

3 A I have not.

4 Q I take it then you've never been on a farm of
5 someone who grows chickens for George's?

12:15PM

6 A I do not recall ever being on one for
7 George's, certainly none in the Illinois River
8 watershed.

9 Q Have you ever been on a farm that -- where
10 they grow chickens in the Illinois River watershed?

12:15PM

11 A I have not.

12 Q So I guess it's fair to say that you have
13 never gone to a farm and had the opportunity to
14 observe what the daily routine is of a person who
15 grows chickens for either George's or any of these
16 other companies?

12:16PM

17 A From all indications, the integrators have the
18 same business practices in the IRW that they have in
19 other areas of the United States and I thought about
20 contacting growers, talking to growers in the IRW,
21 but in my -- I didn't think I would gain anything
22 useful out of talking to the growers because
23 generally speaking, nationally there has been
24 periods of fear in the industry, whether justified
25 or not, there's some fear and, you know, I don't

12:16PM

12:17PM

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1 know if growers are telling me -- I just have no way
2 of assessing whether growers I've never met before
3 would be telling me the truth, exaggerating
4 something on the side of the integrator or
5 exaggerating something they wanted to, and because 12:17PM
6 of that view, I elected not to go talk to a sample
7 of growers in the watershed.

8 Q Okay. So the bottom line is you have not
9 talked to any growers in the watershed?

10 A Correct. 12:17PM

11 Q You haven't sat down and talked to them to
12 determine or try to get a better idea how they live
13 their life and how they make a living?

14 A No.

15 Q Are you familiar with a service called 12:18PM
16 Economic Research Service that I think is connected
17 to the USDA?

18 A It's a branch of USDA.

19 Q What is it?

20 A Just that. 12:18PM

21 Q Maybe you can help me understand it a little
22 bit. What is the Economic Research Service at the
23 USDA?

24 A They do economic research on agricultural
25 issues, provide a lot of economic statistics, do 12:18PM

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1 analyses of industry, subindustries and so forth.

2 Q And do they put out a publication ever so
3 often?

4 A They have a lot of publications.

5 Q Do you read those? 12:18PM

6 A I rely on their website heavily for data, some
7 of their publications, but it's not any regular
8 series that I go look at or any one that I always
9 read.

10 Q I guess the better question would be, do you 12:19PM
11 from time to time read the publications put out by
12 the USDA Economic Research Services?

13 A Some.

14 Q Okay, and have you, at least in the past,
15 based on the ones you've read, have you found the 12:19PM
16 information contained therein to be useful?

17 A Their economic statistics and their data are
18 highly useful. The reports often don't have
19 anything of -- you know, enlightening to an academic
20 economist, but the data is extremely useful. 12:19PM

21 Q Let me switch tracks for just a second, if I
22 could. Are you familiar with what the IRS calls
23 Schedule F?

24 A Farm tax return.

25 Q Yes. Schedule F I think, and you correct me 12:20PM

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1 if I'm wrong, I believe Schedule F is where a person
2 would show their profits and losses on farm
3 operations.

4 A Uh-huh.

5 Q So I'm not an accountant, I'm not a CPA, but I 12:20PM
6 bet you can answer this question. Let me just throw
7 out a little hypothetical. When a person decides to
8 grow chickens, you talked earlier about how they've
9 got to invest in a house and build a house?

10 A Uh-huh. 12:20PM

11 Q And put the necessary equipment in the house;
12 right?

13 A Right.

14 Q If a person spends \$500,000 to build their
15 house or houses -- 12:20PM

16 A Uh-huh.

17 Q -- and to acquire the necessary equipment,
18 then is that person going to be permitted under
19 Schedule F to depreciate over a period of time?

20 A Yes. 12:20PM

21 Q Okay, and do you know how long of a period of
22 time a farmer is allowed to depreciate the cost of
23 what it took to build the houses and to acquire the
24 equipment?

25 A Well, first let me say, there are different 12:21PM

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1 kinds of depreciation. There's economic
2 depreciation that economists use in their
3 accounting, and there's tax depreciation. What
4 you're referring to is tax depreciation, and I think
5 on a house that's 15 or 25 years, I don't recall
6 exactly, but that's not the kind of depreciation I
7 use in the economic analyses that I have done.

12:21PM

8 Q Yeah, but I'm talking about tax depreciation
9 now. If the farmer spent \$500,000 to build his
10 houses and put in the necessary equipment, that
11 farmer is then entitled over a certain period of
12 years to depreciate on his or her income tax return
13 each year, are they not?

12:21PM

14 A Correct.

15 Q And if they had a \$500,000 investment and they
16 wanted to depreciate over a ten-year period, they
17 could depreciate or show a tax deduction of \$50,000
18 per year, could they not?

12:22PM

19 A Correct.

20 Q Are you testifying or serving right now --
21 strike that. Are you serving right now as an expert
22 witness or a consulting expert in any other cases
23 besides this one at the present time?

12:22PM

24 A I do not know the current status of the east
25 Texas Pilgrim Pride-Tyson case. I have not talked

12:22PM

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1 to the attorney in months. The last word I had is
2 that the judge would not certify the class, and it
3 was under appeal. Kelly Tidwell, after not hearing
4 from him for months, called last week and left a
5 voicemail message that he wanted to update me. I 12:23PM
6 called back, and they said he's tied up and would
7 get back to me in ten minutes, and I haven't heard
8 anything. That one could be dead or still active,
9 but that's the only possibility.

10 The Bean versus OK Foods, I assume that my 12:23PM
11 role is over. The plaintiffs had until Sunday, I
12 guess, to accept the reduced damage award or go for
13 retrial over damages, and I don't know what they
14 did.

15 Q Any others? 12:24PM

16 A No. That's it. I've said no to a lot.

17 Q Rather than cover ground that's already been
18 covered, Dr. Taylor, I'm going to pass you to
19 another lawyer. I think if I keep going, I'm just
20 going to repeat ground that's already been touched 12:24PM
21 on.

22 MR. RIGGS: Brian, if you want to get back,
23 we have the document that Dr. Taylor wanted a chance
24 to look at.

25 CONTINUED DIRECT EXAMINATION

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1 BY MR. BURNS:

2 Q Dr. Taylor, if you don't mind, would you
3 identify that document and make it a part of the
4 Record.

5 A It's excerpts from the Tyson SEC document DEF 12:24PM
6 14A filed 12-31-2003.

7 Q Can we mark that as Exhibit 5? Would you like
8 a minute to look over that document?

9 A Please. Okay.

10 Q From your review of that document, can you 12:25PM
11 arrive at the terms and conditions of those
12 agreements that you referred to in Paragraph 19 when
13 you referenced grow-out deals that Tyson executives
14 and insiders had for many years?

15 A Okay. The part that I had highlighted in bold 12:25PM
16 that's on the second page is certain persons,
17 including some executive officers and directors, are
18 engaged in poultry grow-out operations whereby these
19 persons purchased from the company baby chicks,
20 feed, veterinarian and technical services, supplies 12:26PM

21 and other related items necessary to grow these
22 livestock to market age, at which time they're sold
23 either to the company or to unrelated parties. My
24 point was, that's not the kind of contract offered
25 to the growers, the so-called contract growers. 12:26PM

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1 Q Is that the same type of contract that Bo
2 Pilgrim has with Pilgrim's Pride?

3 A He has this kind of arrangement, and then he
4 had another arrangement where he was -- he bought
5 the chicks and feed and so forth for houses that he 12:26PM
6 owned, but then he got a Georgia dock price less a
7 processing fee, and often that amounted to
8 considerably more than what the other contract
9 growers were getting per pound.

10 Q So your understanding is that with regard to 12:27PM
11 the latter of those two, Bo Pilgrim's arrangements
12 that you discussed, those chickens were actually
13 grown out at houses he owned?

14 A Bo had -- from SEC documents, okay, I know
15 that Bo had three kind of contracts. He had the one 12:27PM
16 I just mentioned. He had another set of farms that
17 had contracts that were essentially the same as what
18 the contract growers had, and then he had this
19 arrangement where he bought chicks that went out to
20 unspecified contract growers, and then they were 12:27PM
21 grown out and came back and then he sold them and
22 got income from it. So Bo Pilgrim actually had
23 three kinds of arrangements. Those have changed a
24 little bit over time but --

25 Q Do you have any information or reason to think 12:27PM

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1 that Tyson has any of those type arrangements other
2 than what you've identified from that SEC document?

3 A This is all I've identified so far.

4 Q And do you know which Tyson executives or
5 insiders had those arrangements? 12:28PM

6 A I just know what's stated right here.

7 Q And not to belabor the point, but you haven't
8 seen the actual agreement?

9 A I have not seen the actual contract.

10 Q And you don't have -- 12:28PM

11 A Bo Pilgrim's contract was attached to the SEC
12 document, but I do not have a Tyson executive or
13 insider's contract that I'm aware of.

14 Q You don't have any information as to the rate
15 of return that those individuals received from those 12:28PM
16 contracts?

17 A I do not.

18 Q Okay. You don't know if they made money or
19 broke even or lost money on those contracts?

20 A On the poultry houses themselves as opposed -- 12:28PM

21 Q Just these agreements that you've identified
22 where Tyson executives or insiders purchased chicks,
23 feed and medication and then resold those to the
24 company, you don't have any information as to
25 whether they made money, lost money or broke even on 12:29PM

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1 those?

2 A I don't think I do.

3 Q Okay. If I were to tell you that those

4 agreements actually arose as a way for certain

5 individuals to loan money to Tyson on a low interest 12:29PM

6 or no interest basis, would you have any reason to

7 dispute that?

8 A I've seen this -- well, no, I don't have a

9 basis for disputing it in Tyson's case.

10 Q Okay. Have you ever met a grower that wanted 12:29PM

11 to loan money to his integrator?

12 A No, and I don't know -- I wouldn't expect to

13 be privy to that kind of information.

14 Q So you don't have any knowledge or reason to

15 believe that any Tyson growers would be interested 12:29PM

16 in these types of arrangements or have the financial

17 wherewithal to participate in them?

18 A I have not analyzed that.

19 Q Okay.

20 MR. BURNS: I have no further questions. 12:30PM

21 DIRECT EXAMINATION

22 BY MR. HIXON:

23 Q Dr. Taylor, my name is Philip Hixon. I

24 represent Peterson Farms.

25 A Yes. 12:30PM

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1 Q I think we met during your last deposition.

2 A Yes.

3 Q And I'll warn you I'll be skipping around due
4 to the combination of low blood sugar and prior
5 questions. 12:31PM

6 A Okay.

7 Q Your prior deposition you gave testimony
8 regarding your affidavit submitted in support of the
9 motion for preliminary injunction filed by the
10 State; is that correct? 12:31PM

11 A Correct.

12 Q Okay, and that affidavit, as I recall,
13 contained opinions regarding the relationship
14 between integrators and growers?

15 A Yes. 12:31PM

16 Q And transportation issues related to
17 transporting litter outside the Illinois River
18 watershed; is that correct?

19 A Mostly it discussed the structure of the
20 industry, but there was the partial analysis I did 12:31PM
21 based on one of the Arkansas studies of just hauling
22 litter out, one paragraph I think.

23 Q Okay. With regard to the first part of that
24 question regarding the relationship between
25 integrators and growers -- 12:31PM

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1 A Uh-huh.

2 Q -- your opinion in your affidavit and your
3 opinion in your May 15th report, how have those
4 opinions changed, if any?

5 A I don't think my opinions have changed. It's 12:32PM
6 just in the May document I expanded on some of that
7 and referred to contracts and research and so forth.

8 Q Okay, and what specifically did you expand
9 from the prior opinion to this May 15th opinion?

10 A Well, there are really three main sections. 12:32PM
11 In the May report, one section deals with kind of a
12 listing of research and outreach related to the
13 poultry litter and waste issue. One section deals
14 with reference to the economic studies that have
15 been done. One section, I present all these maps 12:32PM
16 that were available, and a section reviewing in much
17 more detail the contracts the growers had with the
18 different defendant companies and then a much more
19 detailed analysis of hauling litter out.

20 Q Okay. With regard to the contracts, what did 12:33PM
21 you look at specifically; what informed your opinion
22 in the May 15th report as opposed to the prior
23 report?

24 A Well, as I mentioned, all of those contracts,
25 you know, for my affidavit and even for the hearing, 12:33PM

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1 I had just scanned those, and there was nothing
2 fundamentally different from other contracts I had
3 seen. So I went back and took a more careful look
4 at those, addressing issues you raised with the --
5 with one of the Peterson contracts and also
6 addressing kind of the evolution of those contracts
7 and how waste management -- how or when waste
8 management appeared.

12:34PM

9 Q Okay. What were the issues with the Peterson
10 contract that you referred to?

12:34PM

11 A That the growers owned the litter.

12 Q The Peterson contracts state that the grower
13 owns the litter?

14 A Let me go back and make sure.

15 Q I believe that's correct.

12:34PM

16 A Too many contracts for me to remember. All
17 poultry waste produced by the birds covered by this
18 contract shall be the exclusive property of the
19 contract farmer, and it goes on from there.

20 Q Okay. So the Peterson contract says the
21 grower owns the poultry litter?

12:34PM

22 A It is the only contract I've seen that states
23 the defendant -- that the waste is the exclusive
24 property of the grower.

25 Q Okay, and it's my understanding from your

12:35PM

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1 prior testimony this morning that you believe that
2 these contract provisions that you've cited manifest
3 the integrators' attempt to shift risk to the
4 grower; is that correct?

5 A Yes. 12:35PM

6 Q Explain to me how that risk is being shifted
7 in the context of this Peterson contract where the
8 Peterson grower owns the litter.

9 A Well, in the -- I don't think I have -- wait.

10 '79 and '86 contracts make no mention of 12:35PM

11 responsibility for disposal or ownership, and then
12 the '04 contract comes in and says it's the
13 exclusive property of the contract farmer. Then it
14 goes on to state how they can use their exclusive
15 property, which -- 12:36PM

16 Q How does it state they can use their property?

17 A It says the grower shall be responsible for
18 and receive all of the economic benefits from the
19 use and disposal of said litter. Doesn't mention
20 cost or net benefit, and it goes on to specify -- 12:36PM

21 I'm reading my own. Goes on to specify exactly how
22 the grower is to dispose of litter and waste he or
23 she presumably owns and, as I recall, there's a list
24 of what they're supposed to do with their exclusive
25 property. 12:36PM

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1 Q Okay, and you're referring to the BMPs that
2 are contained within the contract?

3 A Right.

4 Q So those were BMPs. Do you know whether the
5 Oklahoma poultry laws and regulations contain any 12:37PM
6 BMPs?

7 A I think they do, yes.

8 Q And would those BMPs contain in Oklahoma and
9 Arkansas laws determine how a grower could use its
10 litter? 12:37PM

11 A It's just strange to me, as an economist, that
12 the contract says it's the grower's exclusive
13 property but then you go on to tell them what they
14 can do with it or can't do.

15 Q That wasn't my question. I'm saying, wouldn't 12:37PM
16 the litter laws in Oklahoma and Arkansas, which
17 you've stated contain BMPs determine how that grower
18 can use his litter?

19 A Yes.

20 Q Okay, and that's going to be independent of 12:37PM
21 anything that's contained in the contract; is that
22 correct?

23 A As I understand it.

24 Q Okay, and I believe you previously testified,
25 I believe it was at the preliminary injunction 12:38PM

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1 hearing, that those litter laws in Oklahoma and
2 Arkansas apply to the growers and govern grower
3 contracts or conduct; is that correct?

4 A Well, I don't know from a legal standpoint if
5 they apply to the application of poultry waste to
6 land. 12:38PM

7 Q That's not what I'm asking. I'm asking you
8 whether the Oklahoma and Arkansas litter laws and
9 regulations apply to poultry growers.

10 A As far as I know, it applies to whoever 12:38PM
11 applies the litter, which is usually the grower.

12 Q Okay. Let's talk about that. Who applies
13 litter?

14 A Well, often the grower does, but there are
15 commercial litter application operators, and I 12:39PM
16 mentioned a couple of them, Traylor and Langley,
17 that were deposed.

18 Q And I believe you previously testified, and
19 Mr. Burns asked you the question about who decided
20 what happens to the litter. 12:39PM

21 A And as far as I know, it's up to the grower.

22 Q It's up to the grower?

23 A Uh-huh, once it's outside or a safe distance
24 from the grow-out operation, safe from health -- for
25 bird -- 12:39PM

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1 Q For biosecurity issues?

2 A Yeah, all of those bio.

3 Q So whether litter is applied on the grower's
4 property is determined by the grower?

5 A Yes. 12:39PM

6 Q In conjunction with any applicable Oklahoma
7 and Arkansas law?

8 A Correct.

9 Q Okay, and whether the grower sells his litter
10 or trades his litter to someone else is determined 12:39PM
11 by the grower?

12 A Certainly under the Peterson contract and
13 historically under the other contracts.

14 Q Okay. So the grower makes those decisions as
15 well? 12:40PM

16 A Yes.

17 Q And those growers' decisions are consistent
18 with ownership of the litter; would you agree with
19 that?

20 A I don't know from a legal standpoint. You 12:40PM
21 know, to an economist, it appears that way but --

22 Q Do you have any reason to believe otherwise?

23 A No.

24 Q Okay. You've testified that you haven't
25 talked to any grower of any of the integrators -- 12:40PM

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1 A Uh-huh.

2 Q -- in forming your opinions in this case. Did
3 you review the depositions of any growers in
4 preparation of these opinions?

5 A Yes, I did. 12:40PM

6 Q Do you recall who those growers were?

7 A I don't recall the names. The transcripts
8 were included in the documents that we passed on.

9 Q Okay. The ones -- did you review any for your
10 initial affidavit that was filed back in November? 12:41PM

11 A I don't think so.

12 Q So the only grower depositions that you
13 reviewed were the ones submitted in the considered
14 materials that were produced with your May 15th
15 report? 12:41PM

16 A Correct, as far as I can remember.

17 Q Do you know whether, among those materials,
18 were any or deposition transcripts from a Peterson
19 grower?

20 A No, I do not recall which integrators were
21 involved. 12:41PM

22 Q Do you know whether the deposition transcript
23 of Al Saunders was included in those materials?

24 A That name doesn't ring a bell but --

25 Q Have you reviewed that deposition transcript? 12:41PM

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1 A As I recall, I reviewed all of those I was
2 provided, which are the ones that I provided to you.

3 Q Okay, and you don't know whether that included
4 Al Saunders?

5 A No, not from memory, I can't tell you that. 12:42PM

6 Q So you don't know what Mr. Saunders' position
7 was regarding ownership of litter?

8 A No.

9 Q Okay. Regarding the grower transcripts that
10 you have reviewed -- 12:42PM

11 A Uh-huh.

12 Q -- do you recall the opinions or their
13 positions with regard to ownership of the litter?

14 A No.

15 Q You don't recall one way or the other? 12:42PM

16 A Huh-uh.

17 Q You don't recall whether that topic was
18 included or discussed in the deposition?

19 A I did not go through those looking for that
20 specific issue. 12:42PM

21 Q Okay. You previously testified that you
22 hadn't contacted any growers in the Illinois River
23 watershed because of various concerns?

24 A Uh-huh.

25 Q Did you provide the State's attorneys with any 12:43PM

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1 questions to be used in grower depositions they
2 could have asked on your behalf?

3 A I don't recall doing that. I don't recall
4 being asked. Didn't know I had the opportunity, so,
5 no. 12:43PM

6 Q You did not?

7 A (Witness shakes head from side to side).

8 Q If you would turn to Page 3, Paragraph 8 of
9 your May 15th opinion.

10 A Okay. 12:43PM

11 Q You set forth a number of things that the
12 integrators generally own or control.

13 A Uh-huh.

14 Q Okay. Among that list, litter is noticeably
15 absent. Do you agree with that? 12:44PM

16 A Earlier I mentioned that I have seen some
17 contracts where the integrator does own and provide
18 the litter, but the typical contract in the IRW it's
19 the grower.

20 Q Okay. 12:44PM

21 A The new litter is what I'm --

22 Q Okay. Let's refer to new litter as bedding.

23 A Okay. Bedding, okay.

24 Q Let's talk about, under the Peterson Farms
25 contract who provides the bedding? 12:44PM

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1 A I don't recall.

2 Q You don't know?

3 A Huh-uh.

4 Q Okay. When I refer to litter in reference to

5 this Paragraph 8, I'm referring to poultry litter

12:44PM

6 that's the subject of this lawsuit.

7 A Okay.

8 Q And this sentence, this first sentence of

9 Paragraph 8, your opinion does not contain a

10 representation that the integrators either own or

12:44PM

11 control the litter; is that correct?

12 MR. RIGGS: Object to the form.

13 Q That's not part of this opinion; is that

14 correct?

15 A That's a legal issue, and I don't claim to

12:45PM

16 have any expertise in that area.

17 Q Well, I disagree. It's not a legal issue.

18 You've got a list of things here that the

19 integrators generally own or control.

20 A Right.

12:45PM

21 Q And on that list there's no mention of poultry

22 litter; is that correct?

23 A That is correct.

24 Q Okay. The second sentence of this Paragraph

25 8, you have various things that the integrators

12:45PM

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1 decide.

2 A Uh-huh.

3 Q And among that list of things, there's not any
4 mention of what to do with litter; is that correct?

5 A That's correct. 12:45PM

6 Q Okay. All of these -- so the absent of those
7 opinions is certainly consistent with Petersons
8 contract that the growers own the litter. Would you
9 agree with that concept?

10 A Yes. 12:45PM

11 Q Okay. This Footnote 1 that's on Page 3, still
12 talking about these control issues, towards the end
13 of that first sentence, it states the greatest
14 degree of control that a firm can gain over another
15 stage of production with regard to this vertical 12:46PM
16 integration discussion. It's a degree of control
17 over production; is that correct?

18 A Generally speaking.

19 Q Okay. So it's your opinion that the
20 integrator has control over production? 12:46PM

21 A Yes.

22 Q I believe it's been your opinion that litter
23 falls outside -- the use of poultry litter as a
24 fertilizer, falls outside poultry production?

25 A It is not a part of the poultry production 12:46PM

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1 process.

2 Q Okay. So if we take that opinion, litter is
3 outside poultry production, we take its absence in
4 the lists that are contained in Paragraph 8 and we
5 compare that with the provision in the Peterson 12:47PM
6 contract that the growers own poultry litter, that's
7 all consistent; would you agree with that?

8 A Yes.

9 Q Let's talk about the second part of your
10 opinion, the litter transport issues for a minute. 12:47PM
11 Your prior affidavit you had some calculations, as I
12 recall, transporting litter 100 miles outside the
13 watershed.

14 A That was a calculation pulled from a
15 University of Arkansas report. 12:48PM

16 Q Okay. Is the opinion that was in that
17 affidavit, is that still your opinion today; are you
18 relying on that opinion; is that some opinion that
19 we're going to see at trial?

20 A That has been replaced by this much more 12:48PM
21 detailed than Ellis' based on the Carreira study and
22 going each year and not just that one little
23 snapshot in time. So I do not plan to rely on what
24 was the little snippet that was in the affidavit.

25 Q Okay. So correct me if I'm wrong, but you're 12:48PM

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1 no longer -- the opinion that was in your affidavit
2 has been replaced with the opinion that's in your
3 May 15th report?

4 A That one little snippet on transportation cost
5 has been replaced by a much more detailed and 12:48PM
6 up-to-date analysis.

7 Q Okay. It's been expanded?

8 A Greatly, yes.

9 Q Okay. Is the purpose of the calculation that
10 you made in your prior affidavit, is the purpose of 12:49PM
11 that calculation the same purpose of the calculation
12 contained in your May 15th report; are you measuring
13 the same thing, in other words?

14 A All I looked at in the affidavit was just a
15 perspective on the cost of hauling the litter out. 12:49PM
16 That's it. There was nothing there about unjust
17 enrichment or in current terms the possibility of
18 making money by selling it outside the watershed.

19 Q Okay. So what's the difference -- explain to
20 me the differences between your prior opinion and 12:49PM
21 your current opinion, how that progressed.

22 A My --

23 Q What was considered in the new opinion that
24 wasn't considered in your prior opinion?

25 A The detailed cost breakdown, the hauling it 12:50PM

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1 off, the hauling of litter to delta cropland and
2 using it there and how much would be applied and
3 then supplementing that with commercial fertilizer.
4 Then I've done it by year using annual fertilizer
5 prices while the affidavit had just a one-year 12:50PM
6 snapshot for '03 or something like that, and then
7 I've calculated the cost avoided by not transporting
8 poultry waste out of the IRW for different amounts
9 and by year.

10 Q Okay. In your prior deposition we had a 12:50PM
11 discussion about proper economic accounting. Do you
12 recall that discussion?

13 A Yes, I do.

14 Q Can you just refresh our memories as to what
15 proper economic accounting is? 12:51PM

16 A Well, to do a full-blown economic analysis of
17 this issue, one part of it would be what I've done
18 here, but another part would be determining how much
19 litter should be transported out, and that's
20 something I was not asked to do and so did not do 12:51PM
21 it, and I've not been asked to look at the external
22 cost associated with litter in the IRW.

23 Q Okay. What would an example of external cost
24 be?

25 A Pollution cost or adverse health consequences. 12:51PM

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1 Q Okay.

2 A External to the firm.

3 Q External to the firm?

4 A That's the usage in economics.

5 Q Okay. Could you define the firm for us? 12:52PM

6 A In this case it would be a defendant company.

7 Q Okay. Your prior deposition we discussed what

8 would go into a proper economic accounting. I

9 believe that's on Page 212 of your prior deposition,

10 and you identified among those factors external 12:52PM

11 costs of too much litter and waste being applied in

12 the Illinois River watershed. That would be part of

13 a proper economic accounting?

14 A Right.

15 Q Did you do that as part of your May 15th 12:52PM

16 report?

17 A I was not asked to and I did not.

18 Q Okay. Not asked. Okay. Part of the next

19 thing that you identify as being part of proper

20 economic accounting would be looking at alternative 12:52PM

21 uses outside the watershed for litter, such as

22 burning. That's on pages -- or Lines 17 and 18.

23 A Yes.

24 Q Did you do that as part of your May 15th

25 opinion? 12:53PM

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1 A I did it as part of the overview, and of the
2 alternatives mentioned, the most attractive one,
3 given what we know right now, is actually hauling it
4 and using it on cropland. So I took a look at the
5 alternatives but did not do the kind of detailed 12:53PM
6 analysis I did here, like for -- burning issues have
7 been raised about the emissions and some on the
8 economics, and there's some other alternatives
9 talked about like cellulosic conversion to bio-oil
10 or ethanol or something, but we do not have 12:53PM
11 commercially viable proven technology at this time,
12 so I simply restricted my analysis to hauling.

13 Q Okay. You didn't analyze any of the other
14 alternatives?

15 A Well, to some extent I did but not with this 12:54PM
16 level of detail because this one appears to be,
17 under known technology and current economics, the
18 best way of using it.

19 Q Okay. What other alternatives did you
20 analyze? 12:54PM

21 A Well, I've already mentioned two that seemed
22 to be on the forefront of current discussion, and
23 there's use of alum and the composting of all of it.

24 Q Okay. Did you reduce that analysis to
25 writing, to paper? 12:54PM

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1 A I did not.

2 Q Okay. For any of these other alternatives?

3 A No.

4 Q So these were just -- how did you -- describe
5 the analysis that was performed then.

12:55PM

6 A The burning, there's a recent Arkansas study
7 where they've actually done that, and they raised
8 some issues and talked about economics. The
9 cellulosic conversion I know something about from
10 other -- or from research I'm doing at Auburn
11 University for bioenergy, biofuels options, and I
12 know it's being talked about in the poultry
13 industry, but proven commercially viable technology
14 has not been demonstrated.

12:55PM

15 Q Okay, and maybe my question is not clear. I
16 guess for purposes of your May 15th report, are you
17 saying that you analyzed these other alternatives
18 that you described?

12:55PM

19 A I sifted through the literature on these
20 others.

12:55PM

21 Q Okay. You reviewed literature?

22 A I reviewed literature.

23 Q And that was the extent of your analysis on
24 these other alternatives?

25 A Yes.

12:56PM

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1 Q Okay. The next element that you described in
2 your prior deposition on this proper economic
3 analysis was looking at lower phosphorus diets as a
4 way of reducing phosphorus. Did you do that as part
5 of your May 15th report? 12:56PM

6 A I do not have the information for that.

7 Q So you didn't perform that analysis?

8 A I know from other Agri Stats reports that they
9 have some summaries showing performance under low
10 phosphorus diets and under high phosphorus diets, 12:56PM
11 but I do not have those from this case and,
12 therefore, I can't use it, but I know the
13 information exists.

14 Q Okay. So that's -- this low phosphorus diet
15 is not part of your opinion in your May 15th report? 12:56PM

16 A Data exists for me to analyze it, but I do not
17 have it.

18 Q Okay. The next factor you identified on Line
19 22 and 23, looking at a range of alternative ways of
20 dealing with a problem. I think we've discussed 12:57PM
21 those. Next, where excess litter might be applied
22 and applied safely. Did you look at that factor in
23 compiling your opinions for this May 15th report?

24 A Certainly looked at the other studies, several
25 of them involve hauling it out, and the recent ones 12:57PM

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1 by University of Arkansas faculty that identified
2 the Arkansas delta, and rice in particular, and the
3 application -- on the safety issue, the application
4 rate that they assumed and I assumed would exactly
5 meet the phosphorus need as stated in the University
6 of Arkansas rice budget.

12:58PM

7 Q Okay. When you are saying application rate,
8 is that the tons per acre?

9 A 60 pounds per acre of P205 that's shown in the
10 rice budget, and I used the numbers from the
11 Carreira study that poultry waste has 57 pounds of
12 P205 per ton, and so that gives me 1.05 ton per acre
13 application rate.

12:58PM

14 Q We're just talking about application rate when
15 you are talking about this safety analysis; is that
16 my understanding?

12:58PM

17 A We're just applying what the budget says rice
18 needs.

19 Q Okay. Your prior opinion that was submitted
20 in support of the motion for preliminary injunction,
21 the purpose of that preliminary injunction was to
22 stop the application of litter because of perceived
23 health threats.

12:58PM

24 A Right.

25 Q And it's my recollection that you have not

12:59PM

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1 performed any analysis of cost associated with
2 abating these perceived health risks; is that
3 correct?

4 A That is correct.

5 Q Have you performed that analysis for your May 12:59PM
6 15th opinion?

7 A I have not.

8 Q Okay. So there's still no measure of what it
9 would cost to safely apply litter as the State has
10 alleged? 12:59PM

11 A There is the presumption that taking it to the
12 delta and applying it to cropland at recommended
13 rates would be safe, but other than that, I have not
14 done any health or detailed safety analysis.

15 Q Okay. If you skip to Page 214 of your prior 12:59PM
16 deposition, Lines 3 through 6. During our
17 discussion we identified that part of the proper
18 economic analysis would be looking at the impact of
19 the State's proposed injunction on poultry growing
20 operations. Do you remember that testimony? 01:00PM

21 A Yes.

22 Q I believe your answer was on integrators and
23 consumers as well?

24 A Yes.

25 Q Did you do that as part of your May 15th 01:00PM

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1 opinion?

2 A Was not asked to, did not do it.

3 Q Okay. We also discussed the impact that this
4 injunction that the State had requested would have
5 on supply and demand of poultry production? 01:00PM

6 A Uh-huh.

7 Q Is that something that you looked at as part
8 of your May 15th analysis?

9 A Again, I was not asked to and I have not.

10 Q Okay. I think Mr. Elrod touched on this 01:01PM
11 earlier. If you jump to Page 22 of your May 15th
12 report, it's Paragraph 56.

13 A Okay.

14 Q You're discussing, the last sentence of that,
15 in the IRW confined poultry operations account for 01:01PM
16 most of the recoverable manure.

17 A Yes.

18 Q And you defined that, but I didn't necessarily
19 follow your definition of recoverable manure. Could
20 you define that for me? 01:01PM

21 A I'm simply saying that I used the word as it
22 was used in the NRCS report, and Footnote 49, that
23 provides a pretty lengthy definition of what they
24 mean by recoverability.

25 Q Okay. Can you -- do you remember what's 01:02PM

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1 contained within this definition in this NRCS
2 report?

3 A They're largely referring to what comes from
4 confined animal operations, which means the cow-calf
5 operations would not be recoverable by their 01:02PM
6 definition, but the waste from a poultry operation
7 or a hog operation would be or a cattle feed lot. I
8 don't think there are any current cattle feedlots in
9 the watershed; used to be way back but --

10 Q So any manure that was generated by something 01:03PM
11 other than a confined animal feeding operation would
12 be unrecoverable litter; is that what I understand?

13 A You can go to this to get the exact
14 definition, but I think that's close enough. That's
15 as close as I can get without reading you verbatim 01:03PM
16 there a long definition.

17 Q Your opinions regarding recoverable manure and
18 unrecoverable manure, have they remained constant
19 throughout your report?

20 A Yes. 01:03PM

21 Q The hundred hours or so you spent preparing
22 this report, those opinions have remained the same?

23 A Yes. It's pretty much followed this USDA
24 definition.

25 Q Okay. Looking at the materials that you had 01:03PM

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1 produced with your May 15th report, there were other
2 drafts of your report included among those
3 documents. Do you recall producing those prior
4 drafts?

5 A Yes. Well, I didn't produce them. They 01:04PM
6 produced them on my behalf, I guess.

7 Q Okay. You provided them to the State's
8 attorneys and the State's attorneys --

9 A I asked them to keep it because there's a real
10 tight limit on my E-mail box and things quickly fill 01:04PM
11 it up.

12 Q Okay. Among those documents there was an
13 April 8th, 2008 E-mail from you to Miss Xidis, Mr.
14 Riggs, Mr. Garren and Mr. Baker. Do you recall that
15 E-mail? 01:05PM

16 A May I see it?

17 Q Sure. We probably need to mark that but --

18 A Yes.

19 Q With regard to this recoverable versus
20 unrecoverable manure, there's some opinions that 01:05PM
21 appear on Pages 7 and 8 of this April 8th draft that
22 don't seem to have made it into your May 15th draft.

23 A Okay.

24 Q If you could, could you explain to me the
25 table in Paragraph 31 of the April 8th draft? As I 01:06PM

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1 understand this, and let me just explain what I
2 think I see. In the first column you've got the
3 years 1982, 1987, 1992, 1997.

4 A Right.

5 Q In the second column you have pounds of manure 01:06PM
6 phosphorus as excreted from all livestock on farms?

7 A Right.

8 Q Is it my understanding that that would include
9 recoverable and unrecoverable pounds of manure?

10 A Yes. 01:06PM

11 Q Okay.

12 A Using their definition.

13 Q Okay, and that's the NRCS definition?

14 A Right.

15 Q Okay, and then the third column we have pounds 01:06PM
16 of recoverable manure phosphorus in excess of crop
17 uptake and pastureland applied over farms?

18 A Also their definition and their numbers.

19 Q Explain the relationship between these two
20 columns. 01:07PM

21 A These are all USDA calculations, and they're
22 all included in Excel files that I forwarded, and
23 there are a whole bunch of different columns in all
24 of that in their county level data, but as I
25 understand it, it's just what it says, that the 01:07PM

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1 middle column is a total pounds of phosphorus from
2 all livestock on farms, hogs, chickens, cows,
3 everything they included in their study, and then
4 they calculated the pounds recoverable and, again,
5 that is largely from confined operations. 01:07PM

6 Q Okay. So the second column all manure; the
7 third column just recoverable manure; is that
8 correct?

9 A Phosphorus in both cases.

10 Q Okay. Well, phosphorus, phosphates in 01:07PM
11 recoverable manure, all manure?

12 A Right.

13 Q Okay, and going down through each of these
14 years, 1982 through 1997, it appears that the
15 recoverable portion of this is only about a third of 01:08PM
16 the total phosphorus. Would you agree with that?

17 A Yes, by their definition.

18 Q By their definition, okay. Would you skip
19 over to I think Paragraph 33, the table on Page 8.

20 A Okay. 01:08PM

21 Q We've got a similar table, except it's for
22 nitrogen.

23 A Uh-huh.

24 Q And the questions I just asked about this
25 other table on Page 7 would apply also to this table 01:08PM

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1 on Page 8?

2 A Yes. These are all USDA calculations.

3 Q Okay. So this is comparing all manure versus
4 recoverable manure?

5 A These are the calculations that underlie their 01:08PM
6 U.S. maps.

7 Q Okay, and looking at this, it's on the
8 nitrogen table, the recoverable portion is only
9 approximately half of the total; is that correct?

10 A Correct. 01:09PM

11 Q Okay. Can you tell me why these tables were
12 removed from your draft report and were not included
13 in your May 15th opinion?

14 A They have not updated these, and I understand
15 there are issues connected with how they calculated 01:09PM
16 these numbers and how they defined recoverable and
17 other factors, and I was told by the USDA economist
18 that they had not updated them because the engineers
19 had changed some of the technical coefficients a
20 little bit, so I decided to remove them, and in a 01:09PM
21 way it was duplication with the maps, too, and they
22 are provided in Excel files --

23 Q Okay.

24 A -- somewhere.

25 Q Okay, and you believe those were produced -- 01:10PM

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1 A Yes.

2 Q -- in your considered materials?

3 A Yes.

4 MR. HIXON: I'm being told we need to
5 change tapes, so let's take a little break. 01:10PM

6 VIDEOGRAPHER: We're now off the Record.
7 The time is 1:10 p.m.

8 (Following a short recess at 1:10 p.m.,
9 proceedings continued on the Record at 1:16 p.m.)

10 VIDEOGRAPHER: We are back on the Record. 01:16PM
11 The time is 1:16 p.m.

12 Q Okay. Dr. Taylor, we left off with why these
13 tables in your April 8th draft have been removed
14 from your May 15th report, and can you tell me who
15 informed you of these issues with these 01:17PM
16 calculations?

17 A Mark Ribaud, R-I-B-A-U-D-O, who was one of
18 the authors of the study, and I contacted him to see
19 if he had updated with the '02 census, and he said,
20 no, the study ended but the engineers have changed 01:17PM
21 their technical coefficients some, and that's kind
22 of where it was dropped.

23 Q Okay. Did the State's counsel have any input
24 as to whether these tables remained in the report or
25 were taken out of the report? 01:17PM

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1 A They did not. As I mentioned, they underlie
2 the charts here, so implicitly the data are still
3 there.

4 Q Okay. While we're in this April 8th report,
5 let's skip over to Page 18 and Paragraph 50. 01:18PM

6 A Okay.

7 Q You've got here a definition of waste, and
8 then the final sentence of this paragraph reads, by
9 this definition, poultry litter is a waste if it
10 costs more to use where it is produced than it is 01:18PM
11 worth as a soil amendment.

12 A Yes.

13 Q Did you perform any analysis to support that
14 statement?

15 A As I mentioned earlier, I have not done 01:18PM
16 detailed analysis on the on-farm economics of
17 commercial fertilizer and/or litter application in
18 the IRW.

19 Q Okay, and why were those analysis not done?

20 A I was not asked to. 01:18PM

21 Q Okay. Can you tell me why this paragraph was
22 removed from your May 15th report?

23 A I just thought it got sidetracked with
24 economic definition, which is not necessarily
25 relevant here. 01:19PM

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1 Q Okay. Can you elaborate on that? I'm not
2 following what you are saying.

3 A Well, this really goes to the on-farm
4 economics of it and not the major issues of the
5 litigation as I see it but, you know, I have no 01:19PM
6 problem including it. It is a -- it would be a
7 standard way an economist would define waste if they
8 were asked to. I haven't found a reference in many
9 articles, but this is how an economist would define
10 it in the context of crop production. 01:19PM

11 Q Okay. That's how an economist would define
12 it, but you didn't perform that analysis?

13 A Correct.

14 Q As we've discussed, that analysis would be
15 part of a proper economic accounting; is that 01:20PM
16 correct?

17 A A full-blown economic analysis as an economist
18 would do if they had unlimited funds in a research
19 budget.

20 Q Okay. You weren't asked to do that -- 01:20PM

21 A No.

22 Q -- for this? Okay. Let's skip back to your
23 May 15th report. Go to Page 36, the table that's in
24 Paragraph 73.

25 A Okay. 01:20PM

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1 Q Just go down the list and describe what these
2 various costs represent and where you obtained these
3 numbers.

4 A As stated here and as I've said before, they
5 were all obtained from the Carreira study, and this 01:21PM
6 is exactly as they were reported. They didn't
7 provide detailed definition and, therefore, I do not
8 have, but they had the amortized capital cost for a
9 conveyor belt, bobcat and a trailer and a truck to
10 pull a trailer. The site cost would be office, 01:21PM
11 scales, land and infrastructure, operating, record
12 keeping, supervision and a field foreman to
13 supervise all of this, and then all of the other
14 costs, which are the large part of it, obtaining
15 litter from the farm, which they assumed was worth 01:21PM
16 \$7, \$2 to load it in a truck, \$2 to unload it from a
17 truck, \$2 to clean out the truck for the unbaled
18 litter, \$3 a ton to store it in a building and \$2 to
19 take it out of the building and put it on a
20 spreader, then the application to land \$7, and 01:22PM
21 disking the litter and waste in, \$6. Then they had
22 a per mile charge on top of all of this.

23 Q Okay, and I guess my question, what I was
24 trying to get at, I'm wanting to understand what
25 these numbers represent apart from the descriptions 01:22PM

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1 contained in the table itself, and is it my
2 understanding that you don't know what is contained
3 within these numbers apart from what was contained
4 in the Carreira report?

5 A That is correct. 01:22PM

6 Q And you don't know what inputs were put into
7 these or how these numbers were arrived at?

8 A That's correct.

9 Q Okay. If we look at the other costs,
10 obtaining litter from the farm \$7 -- 01:22PM

11 A Uh-huh.

12 Q -- what's your understanding of that cost?

13 A That -- whatever is in the Carreira study. I
14 assume it would be taking the litter out of the
15 house, which doesn't have a full \$7 charge, but that 01:23PM
16 is what the grower would get for the litter in the
17 house.

18 Q Okay. So that cost, if I'm understanding
19 correctly, would be the integrator paying the grower
20 \$7 a ton for the litter? 01:23PM

21 A Well, not necessarily the integrator.
22 Whoever.

23 Q Whoever?

24 A Whoever.

25 Q So it's the value of the litter? 01:23PM

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1 A It is the gross value.

2 Q Gross value, okay. We go back to your April
3 8th report, Page 56 or pardon me, Page 20, Paragraph
4 56. It looks like most of these same numbers are in
5 Table 3 that's contained in the April 4th draft. 01:24PM

6 A Yes. I went back and included the capital
7 costs that I had overlooked in the draft.

8 Q Okay, and why were those additional costs
9 included?

10 A Because Carreira included them. 01:24PM

11 Q Okay. So why were they omitted from the April
12 8th draft?

13 A Just an oversight on my part.

14 Q Okay. Part of -- as I understand it, part of
15 the purpose for these various calculations is your 01:24PM
16 calculating a number for unjust enrichment.

17 A Yes.

18 Q Is that correct? What's your understanding of
19 unjust enrichment?

20 A Simply that if they had factored in the cost 01:24PM
21 of transporting the litter and waste out of the
22 watershed -- well --

23 Q I guess my question is, why have you
24 calculated these numbers?

25 A Because I was asked to address the unjust 01:25PM

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1 enrichment issue.

2 Q Okay, and what is your understanding of the
3 unjust enrichment issue?

4 A These are the costs that the integrators
5 avoided by not transporting a specified amount of 01:25PM
6 litter out of the watershed by year.

7 Q Okay. So it's your understanding it's a
8 damage number; would that be correct?

9 A Yes.

10 Q Okay, and it's my understanding that it's -- 01:25PM
11 your early testimony was that you used the highest
12 costs among the various studies that you looked at
13 or various sources?

14 A These, yes, are a little bit higher than the
15 other ones and more complete, a lot more items than 01:25PM
16 the other studies.

17 Q So it's my understanding that you used the
18 highest cost to calculate a damage number; is that
19 correct?

20 A I took the cost estimate that I thought was 01:26PM
21 the best one that had been done with all of the
22 detail and used it as opposed to the others which
23 did not have this detail and/or were older than this
24 study.

25 Q And those were the highest costs? 01:26PM

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1 A That's the way they ended up, yes.

2 Q Okay.

3 A Well, out 3 or 400 miles or so.

4 Q Okay. Let's look at Table 4 in your May 15th
5 report.

01:26PM

6 A Okay.

7 Q Tell me how the numbers in this table were
8 calculated.

9 A Table 4?

10 Q It's Page 38 of your May 15th report.

01:27PM

11 A Okay. Well, the exact formula that I used are
12 all included in the Excel spreadsheet that I
13 provided that had some of the appendix tables and I
14 think even some that I didn't include in this
15 appendix, but they're in the Excel file. I took --
16 I assumed that the Carreira numbers applied to '07.
17 It was published in late '07. I couldn't target the
18 precise year. I assumed that it applied to 2007,
19 and Table 4 has a real calculation that overlays a
20 nominal calculation. I had these costs only for
21 '07, and nowhere do we have a consistent time series
22 on litter hauling costs by year going back in time.

01:27PM

01:27PM

23 So one calculation was to take these numbers
24 and use a transportation cost index published by BLS
25 to hindcast them back to 1988, and then this also

01:28PM

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1 involves supplemental application of commercial
2 fertilizer to meet the nitrogen and potassium needs
3 of rice not met by the litter, so I had a
4 calculation there that followed exactly the Arkansas
5 budgeted information. So the real calculation that 01:28PM
6 overlays that other just puts everything in current
7 dollars, and the Consumer Price Index was used for
8 that, which is the standard way of doing it, real
9 versus nominal dollars.

10 Q Okay. So in the description of Table 4 where 01:29PM
11 it says real in 2008 dollars --

12 A Uh-huh.

13 Q -- that brings all of these calculations up to
14 2008?

15 A Right, without any interest of any kind. 01:29PM

16 Q Okay. So let me understand. A 2008 dollar
17 versus a 1988 dollar?

18 A Uh-huh.

19 Q What's the relationship between those two?

20 A Well, inflation. To give you another example, 01:29PM
21 I remember paying \$2 a gallon for gasoline in
22 Montana in 1980 something. Adjusted for inflation,
23 \$4 now is less, and this is just an inflation
24 adjustment, so that the number for hauling it 200
25 miles in 1988, which is 14 cents, that is expressed 01:30PM

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1 in our dollars and not 1988 dollars. In 1988
2 dollars it might be five cents.

3 Q Okay.

4 A I reported the indices that I used.

5 Q I guess I'm -- so this 14 cents, 1988, 200 01:30PM
6 miles is \$208?

7 A Right.

8 Q And your testimony is that would likely be a
9 lower number?

10 A In -- 01:30PM

11 Q In 1988 dollars?

12 A And the nominal terms as opposed to real,
13 those calculations are included in the spreadsheets
14 and other tables that are there.

15 Q Okay. If we go down the list in the 200-mile 01:31PM
16 column --

17 A Uh-huh.

18 Q -- the \$1.13 would likely be less in 1989
19 dollars?

20 A Yeah, 50 cents or something. 01:31PM

21 Q And the \$7.31 would likely be less in 1990
22 dollars?

23 A Right.

24 Q Okay. So for purposes of this, these
25 calculations, all of these are inflated 2008 01:31PM

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1 dollars; is that my understanding?

2 A That is correct.

3 Q Okay. If you go back to your April 8th report

4 on Page 21, again, it's Table 4, all of these

5 numbers appear to be different, except that we've

01:31PM

6 got real in 2007 dollars. Is the difference between

7 the numbers in Table 4 in your May 15th report and

8 your April 8th draft, is it just the difference

9 between the 2008 dollars and the 2007 dollars?

10 A No. As I mentioned in my E-mail, I had not

01:32PM

11 double checked all my calculations, and I found some

12 mistakes and corrected those.

13 Q Okay. So there --

14 A There were mistakes in the draft.

15 Q In the April 8th draft?

01:32PM

16 A Right.

17 Q What were those mistakes?

18 A I don't recall exactly, but I went through and

19 thoroughly checked all of the formula that are

20 hidden in the Excel file, whether or not you can

01:32PM

21 unhide them.

22 Q Okay, and you believe that Excel file was

23 produced to the defendants?

24 A I think so. If not, I will.

25 MS. XIDIS: What was your question?

01:32PM

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1 MR. RIGGS: Was the Excel file produced to
2 the defendants?

3 MS. XIDIS: Should have been, yeah.

4 A Should have been.

5 Q All right. Let's look at Table 5. 01:32PM

6 A Okay. New or old?

7 Q Let's look at new first.

8 A Okay.

9 Q Before we do that, on Table 4 new, are the
10 numbers in this table calculated using the numbers 01:33PM
11 that were contained in the Table 2 on Page 36?

12 A Yes, as I have described.

13 Q Okay. So it's my understanding that this
14 table would assume that litter -- that the grower
15 was paid the \$7 a ton for the litter? 01:33PM

16 A If you're talking in real 2008 dollars.

17 Q Okay. If that's what the calculation or the
18 number represents, that's what we're discussing.
19 What's the significance of the 1988 date?

20 A None in particular. I just kind of drew a 01:34PM
21 line on how far to go back. I didn't know whether
22 it should be '05 or 1970, but twenty years back just
23 seemed far enough to me, and the plaintiff attorneys
24 didn't indicate otherwise.

25 Q Okay. So what factors did you take into 01:34PM

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1 consideration in determining this 20-year time
2 period?

3 A Nothing really, except I know you can only go
4 back so far in time, statute of limitations, and I
5 figured this was going back too far, and about 1988
6 is when it became -- when it was recognized that we
7 had a problem in phosphorus in high density poultry
8 areas and, you know, that date is when I went to
9 Auburn, and it was sometime shortly after that when

10 I learned that the issue of concern to NRCS and
11 others was not nitrogen in poultry as it had been in
12 the '70's but phosphorus, so -- but there's no
13 really hard reasoning behind picking 1988.

14 Q Okay. Your Table 4 has various calculations
15 for 200 miles, 250 miles, up to 325 miles.

16 A Uh-huh.

17 Q Your prior opinion was based on a 100-mile
18 radius from the watershed?

19 A That was just getting it out of the watershed,
20 and that was an example, and a footnote said it can
21 be more or less depending on hauling distance.

22 Q Okay. So the distances contained in the Table
23 4, is that related to this assumption that this
24 litter would be hauled to eastern Arkansas?

25 A Well, here rather than picking one point 100

01:34PM

01:35PM

01:35PM

01:35PM

01:36PM

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1 miles and then simply saying you can scale it up or
2 down, I picked these different distances, and those
3 distances are -- I approximated as distance to the
4 different counties in the delta area identified in
5 the Carreira study.

01:36PM

6 Q Okay.

7 A So Lonoke is the closest and Poinsett is the
8 most distant as I recall.

9 Q Let's go on to Table 5. Explain how these
10 calculations were made.

01:37PM

11 A Okay. The Carreira study indicated how much
12 could be hauled, used on rice in the different
13 areas. So just assuming we wanted to haul out
14 350,000 tons, not all of that could be used in
15 Lonoke County, the closest one. You could go up to
16 all of the rice acreage in that county, and then you
17 would go to the next one over and end up with some
18 of it up in I think Poinsett County.

01:37PM

19 So I took the numbers on how much could be
20 used on rice in each area, and that is behind these
21 calculations, and those distances are definitely in
22 the spreadsheet, I mean the quantities, how much
23 could be applied in each county is in the Carreira
24 study and reflected in my spreadsheet calculation.

01:37PM

25 Q Okay. Explain to me how the numbers in Table

01:38PM

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1 4 were used in Table 5.

2 A This shows the -- Table 4 shows the per ton
3 cost, like the first number, the per ton cost of
4 hauling it 200 miles in 1988, and so there's only a
5 certain amount we could use in 200 miles, and let's 01:38PM
6 say 350,000 tons. Not all of that can be used
7 within 200 miles. So I take the 14 cents times what
8 can be used in 200 miles, and then we have more, and
9 we go to the 250 miles, which is 569, and keep
10 moving in that fashion until we get the aggregate 01:39PM
11 cost of hauling 350,000 tons out in 1988.

12 Q Okay, and this is assuming that all of this is
13 being transported from the Illinois River watershed
14 to these various counties in eastern Arkansas?

15 A Identified in the Carreira study. 01:39PM

16 Q As part of your analysis, did you analyze
17 whether there was a viable market in eastern
18 Arkansas for 350,000 tons of litter?

19 A I only did what Carreira and others did and
20 assumed that there was a viable market there and 01:39PM
21 that it would be used on the same acreage of rice
22 that they indicated in their study.

23 Q Okay, and did Carreira -- the Carreira report
24 did not cover a 20-year period; is that correct?

25 A That's correct. 01:40PM

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1 Q It looked at a single year?

2 A Right.

3 Q Okay. Did you make any kind of adjustments
4 between the Carreira report and this Table 5
5 regarding --

01:40PM

6 A Changes in acreage?

7 Q Yeah, those types of things.

8 A I did not. That can be done, and I mentioned
9 that this calculation can be refined, but I did not
10 do that.

01:40PM

11 Q Did you do any analysis regarding -- I guess
12 the end user in these eastern Arkansas counties,
13 what would be their incentive for using this poultry
14 litter as opposed to commercial fertilizer in 1988
15 through 2008?

01:40PM

16 A Just look at the cost of applying commercial
17 fertilizer only compared to the cost of applying
18 1.05 tons of litter supplemented with commercial
19 fertilizer, and those cost comparisons are given
20 somewhere in all of this.

01:41PM

21 Q Okay. If we look at the 350 tons, 1988, this
22 3.4 million dollars, what does that number
23 represent, and I guess my question is, is that -- is
24 it a gross number; is it a net number; is it
25 strictly a cost number; does it take into

01:41PM

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1 consideration whether, okay, somebody hauls the
2 litter to eastern Arkansas, they sell it; is any
3 income from that sale incorporated into this number?

4 A Only as reflected in the Carreira study.

5 Q Okay. The Carreira study again looked at 01:41PM
6 2007?

7 A Right, but, again, I've hindcast all of these.

8 Q Okay.

9 A This looks at the cost. It is net.

10 Q Okay, if we go down and look at the 2007 line, 01:42PM
11 regardless of the tonnage, we have zeros?

12 A Right.

13 Q Why is that?

14 A That's because the increase in the price of
15 fertilizer has more than offset the increased cost 01:42PM
16 of fuel in hauling it, and that means that up to
17 350,000 tons could be profitably used outside the
18 watershed.

19 Q Okay. So it could be profitably used in 2007?

20 A And '8. 01:42PM

21 Q Okay, and I guess --

22 A It's accelerating for '09.

23 Q Because of energy prices, commodity prices?

24 A A whole host of things, but it's primarily the
25 dramatic increase in the price of fertilizer, and 01:43PM

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1 all of the energy price increases are reflected more
2 in fertilizer than they are in trucking costs.
3 Trucking costs you have the fuel part, but you have
4 a lot of non-fuel items that are not going up as
5 fast. So the fertilizer is getting much more 01:43PM
6 valuable, and the cost of fertilizer is going up
7 faster than the cost of trucking litter and,
8 therefore, the last two years it shows it would be
9 profitable to haul out.

10 Q Okay, and I guess the inverse of that would be 01:43PM
11 less profitable in these prior years?

12 A Right, but it's now profitable, and it was not
13 in the earlier years with a couple of exceptions for
14 low amounts.

15 Q Okay, and that takes me back to the question I 01:43PM
16 asked before. What's the incentive for the end user
17 in these eastern counties to use poultry litter as
18 opposed to commercial fertilizer if they're not
19 having to incur these transportation costs in these
20 earlier years? 01:44PM

21 A Well, I tried to answer that earlier and I
22 know we get caught up in a lot of complex
23 calculations, but in Appendix Table A there's one
24 calculation that's the cost of commercial
25 fertilizer, plus the application cost, no litter on 01:44PM

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1 rice, and in '08 it's \$212 because fertilizer has
2 gone up so much, but the cost of commercial
3 fertilizer to supplement 1.05 pounds -- tons of
4 litter plus the application costs for both are a
5 hundred. The incentive for the rice farmer is the
6 difference for those two, and in '08 it's \$112
7 approximately an acre.

01:45PM

8 Q May I see that?

9 A Sure.

10 Q If we look at your prior, the April 8th
11 report, it's on Page 22.

01:45PM

12 A Uh-huh.

13 Q Again, these numbers are lower?

14 A It's because of mistakes.

15 Q Okay. Can you elaborate on the mistakes?

01:45PM

16 A I don't recall. It was in some of the complex
17 formulas where I had something off, but I've gone
18 through about a million other formulas since then,
19 and I don't remember where the mistake was, but --

20 Q Okay. Just looking at this --

01:46PM

21 A It's something I uncovered. They didn't
22 uncover it.

23 Q It appears to be a substantial mistake. If we
24 look at the first, the column, the 50,000 ton
25 column.

01:46PM

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1 A Uh-huh.

2 Q If you look at the cumulative total of your
3 April 8th report, you've got \$186,000?

4 A Yes.

5 Q And if you look at your May 15th report, 01:46PM
6 you've got 6.1 million dollars?

7 A Uh-huh, and it -- yes, it's substantial, and
8 it is also reflected in the Table 4 that we talked
9 about, the mistake I found. The mistake in Table 5
10 I think traces back to the mistake in calculating 01:47PM
11 Table 4.

12 Q Is that the only mistake? Doesn't seem like
13 the Table 4 numbers are that far off, not to this
14 magnitude.

15 A I don't recall. I may have found others 01:47PM
16 but --

17 Q Do you recall what number, what dollars were
18 used in this April 8th report?

19 A Well, for the real values, I used 2007, and my
20 calculation only went through '07 and then I got the 01:47PM
21 spring of '08 fertilizer price and I added one year
22 in there.

23 Q Okay. So, again --

24 A And I changed -- when I did that, I changed
25 the base for adjusting for inflation from '07 up to 01:48PM

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1 '08.

2 Q Okay. Your Table 5 in your May 15th report, I
3 don't think I've asked this, but all of these
4 calculations are 2008 dollars again; is that
5 correct? 01:48PM

6 A I'm getting things out of order. Oh, here it
7 is. These numbers, yes, in Table 5 are in '08
8 dollars, and I did not mention that.

9 Q Okay.

10 A Oh, down at the bottom I did, cumulative in 01:48PM
11 2008 dollars without interest.

12 Q Okay. So if we went down any one of these
13 columns, the 1988 number would be less in 1988
14 dollars than it is in 2008 dollars; is that correct?

15 A Well, generally, yes. You know, zero won't be 01:49PM
16 but --

17 Q Right, and the zeros in these, what do they
18 represent in Table 5?

19 A Labeled Table 5 cost avoided, the zeros are
20 because there would be a profit that year, and I do 01:49PM
21 have those numbers but I zeroed it out.

22 Q So you amended those profit numbers from your
23 unjust enrichment calculation?

24 A Yes.

25 Q Okay. The calculations that are contained in 01:49PM

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1 the Tables 4 and 5, do those assume this centralized
2 location that was discussed in the Carreira report?

3 A Yes.

4 Q What would that facility contain? I believe
5 you described it briefly with Mr. Elrod, but --

01:50PM

6 A Well, just Carreira, I followed the Carreira
7 study. They identified two possibilities, Siloam
8 Springs and Prairie Grove. You would have to ask
9 them for details.

10 Q Okay. So it would be some kind of
11 distribution facility?

01:50PM

12 A Right.

13 Q But you don't have any details?

14 A Collection and distribution facility, but I
15 don't have any details on it.

01:50PM

16 Q Okay, and does that facility exist in Siloam
17 Springs currently?

18 A Not unless there's a partial one somewhere
19 connected with BMP, but I'm not aware of any central
20 collection facility.

01:51PM

21 Q Okay. Same question for Prairie Grove?

22 A Same there.

23 Q And would be the same be true back to 1988?

24 A Yes, definitely.

25 Q I guess your transportation costs, these

01:51PM

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1 calculations, does that calculation include distance
2 from the farm to the distribution facility, from the
3 distribution facility to the end user, or is it just
4 from the centralized location to the end user?

5 A Again, you would have to ask Carreira for 01:51PM
6 details of that, but he's showing the cost of
7 getting the litter from the farm, loading it in a
8 truck and then you take it to a central collection
9 place and unload it, and I don't know how he's
10 factored in the twin hubs. 01:52PM

11 Q So you don't know what the distance
12 represents?

13 A No.

14 Q Okay. Is the cost of construction of this
15 centralized facility, is that taken into account 01:52PM
16 anywhere in these calculations in Table 4 and Table
17 5?

18 A I'm assuming it's amortized, meaning you take
19 the capital cost and the length of a life and
20 annualize it. 01:52PM

21 Q Okay, and amortize from what point? You've
22 got Carreira, which was a one-year study, and you've
23 got --

24 A I'm assuming that Carreira did that because,
25 see, they have capital costs for conveyor, bobcat, 01:52PM

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1 trailer and truck, and I'm assuming that's
2 amortized. It would have to be to be that small.

3 Q Okay, and you're assuming that those
4 amortization rates, the same rates would apply
5 during your 20-year period?

01:53PM

6 A Right, and the site costs.

7 Q Your prior opinion in your affidavit that was
8 submitted back in November, additional
9 transportation costs that you calculated in that
10 affidavit you opined would be transferred to
11 consumers. What's your assumption with regard to
12 the calculations that you've made in Table 5 of your
13 May 15th report?

01:53PM

14 A I have not addressed that, but long term you
15 expect markets to adjust, competitive markets to
16 adjust to changes in cost, and historically there
17 would have been a somewhat higher price for poultry
18 had the integrators covered all of these costs that
19 I've laid out, while for current year, since there's
20 a benefit to hauling the litter out, it would go the
21 other way, but I have not put a number to any of
22 that. I have not been asked to.

01:53PM

23 Q You haven't been asked to analyze the impact
24 that that additional cost would have on production
25 in 1988?

01:54PM

01:54PM

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1 A I have not, or on consumers.

2 Q So you don't know how those numbers would
3 impact profitability for any given year in that
4 20-year period for poultry production in the
5 Illinois River watershed? 01:54PM

6 A I have not calculated that, no.

7 Q Okay. So you don't know whether those costs
8 would have put one or more of the integrators out of
9 business sometime in that 20-year period?

10 A I do not have financials for the defendants. 01:55PM
11 Therefore, I cannot determine whether that would put
12 them out of business, but these costs expressed on a
13 per pound basis are fairly small.

14 Q Okay. Can you tell me who Michael Hanneman
15 is? 01:55PM

16 A He's an ag economist in California.

17 Q Okay. Did he have any part in the opinions in
18 your May 15th report?

19 A He did not.

20 Q Appears that -- well, the documents you 01:56PM
21 produced, there was a February 28th, 2008 E-mail
22 from Mr. Hanneman to yourself, Miss Xidis and D.
23 Chapman. Do you know what the subject matter of
24 that communication was?

25 A All I remember is it had to do with some of 01:56PM

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1 the external costs, not the hauling costs but more
2 the environmental and/or health costs.

3 Q Okay. Some of the cost issues that you were
4 not asked to look at for your May 15th report?

5 A Correct. 01:56PM

6 Q Earlier this morning when you were testifying
7 regarding this contract that was provided to you by
8 a grower in Alabama, the Pilgrim's Pride contract,
9 you made reference to your report. What were you
10 referring to then if you recall? 01:58PM

11 A A report I authored on restoring economic
12 health to contract poultry production that was based
13 largely on Alabama farm business analysis,
14 association records of profitability or lack thereof
15 for contract production. 01:58PM

16 Q Okay. Was --

17 A It's in my reference list.

18 Q Okay. It's something that was produced in
19 your materials in this lawsuit?

20 A It's referred to. I don't know that it was
21 produced in this one. 01:58PM

22 Q Okay. Is it something that you used in
23 forming your opinions in your May 15th report?

24 A No.

25 Q You also testified earlier that you had spoken 01:58PM

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1 with scientists about market resistance with regard
2 to this eastern Arkansas Carreira report.

3 A Just in general, not associated with the IRW.

4 Q Who were those scientists?

5 A Well, had many discussions on and off with my 01:59PM
6 plant pathology collaborator, Dr. Rodrigo Rodriguez
7 Cabana.

8 Q That's a mouthful.

9 A That's a mouthful, yeah. Rod for short.

10 Q What was the substance of those conversations? 01:59PM

11 A Well, highly varied because he did work on
12 using poultry litter and, as I mentioned, with some
13 of his potions to suppress the bad soil-borne
14 organisms that are a problem in the South with most
15 any field crop, and the problem for him is that 02:00PM
16 there's no uniformity in the poultry litter, which
17 is also an issue here, and to make this kind of
18 system work, you would have to have testing to know
19 the actual N, P and K content of the litter so that
20 the rice farmer, cotton farmer or whatever would 02:00PM
21 then know how much commercial fertilizer to use to
22 supplement it, and that's always an issue, but the
23 testing is pretty quick and can be done
24 inexpensively.

25 Q Are those issues reflected in the calculations 02:01PM

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1 in your Tables 4 and 5?

2 A That's such a small cost, it would be some
3 decimal way over here.

4 Q Okay. Any other market resistance issues that
5 you've discussed with Rod or anyone else? 02:01PM

6 A That is the primary issue that we've discussed
7 on and off for many years, long before I got
8 involved in this litigation.

9 Q Earlier with regard to the question that Mr.
10 Elrod had asked, you made a statement that you're 02:01PM
11 not sure how the ESW settlement figures into use of
12 litter. Do you recall that statement?

13 A I recall a discussion about the ESW, but I
14 don't recall that exact statement.

15 Q Okay. What is your -- just based on my notes, 02:02PM
16 we were discussing the oligopsony and monopsony
17 issues.

18 A I do not understand the role that growers
19 played in that settlement. He indicated --
20 suggested there were grower meetings and all kind of 02:02PM
21 things and the growers agreed to this, and that's
22 what I was unaware of.

23 Q Okay. You also testified earlier that growers
24 were able to obtain a fair return on their
25 investments until the mid 1990's. Can you elaborate 02:03PM

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1 on what happened in the mid 1990's that would have
2 changed that?

3 A Well, that information comes from farm
4 management specialists, and they pointed to the mid
5 1990's, and certainly we've -- there's no detailed
6 public information on grower returns or even grower
7 pay per pound like what is in Agri Stats, but the
8 Alabama Farm Business Analysis Association indicates
9 that, with proper economic accounting, they're

10 barely getting minimum wage, the participating
11 growers, and they have those detailed records since,
12 oh, '95 or '96. I think it's a combination of

13 things, industry expansion slowed down, but also
14 that is when tunnel ventilation -- a push behind
15 tunnel ventilation and the much more expensive
16 equipment in the house took off, and that pushed
17 some of the farmers back into a debt cycle and so
18 forth. It's a combination of factors that I think
19 led to that.

20 Q Would any of those factors include the
21 government regulation of poultry litter?

22 A No, not to any significant degree.

23 Q As part of your May 15th opinions, did you
24 analyze the relationship between the poultry
25 operations in the Illinois River watershed and

02:03PM

02:03PM

02:04PM

02:04PM

02:05PM

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1 cattle operations?

2 A Well, Mr. Elrod and I went over a lot of that,

3 that most of the operations have cow-calf

4 operations, and historically they have used the

5 litter, applied it to the pasture and hay land, and 02:05PM

6 that had some gross value. Going way back in time,

7 it had a lot of value, and now it has much less

8 value. So it does factor into their overall

9 operation, but as I've also indicated, I have not

10 analyzed in detail the on-farm economics of litter 02:06PM

11 application in the IRW because I wasn't asked to.

12 Q And that would include use of poultry litter

13 in non-poultry operations?

14 A It would involve looking at the poultry

15 operation and the cow-calf operation together. 02:06PM

16 Q Okay, and cow-calf operations independent of

17 any poultry operation?

18 A Or poultry operation, cow-calf litter applied,

19 cow-calf without litter applied or with part of it

20 applied or cow-calf with commercial nitrogen, with 02:06PM

21 urea applied rather than the poultry waste.

22 Q Okay, and in short, none of that analysis was

23 done?

24 A I was not asked to. I have not done it.

25 MR. HIXON: I believe that is all that I 02:07PM

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1 have. Thank you.

2 MR. RIGGS: Did you have questions?

3 MR. TUCKER: Wow, we're still here. I'm
4 just teasing. No, I don't. Mine were covered and
5 then some.

02:07PM

6 MR. RIGGS: Let's take a break. We might
7 be finished.

8 VIDEOGRAPHER: We're now off the Record.
9 The time is 2:07 p.m.

10 (Following a short recess at 2:07 p.m.,
11 proceedings continued on the Record at 2:10 p.m.)

02:07PM

12 MR. RIGGS: We have no questions, and we'll
13 inform the witness you have the -- you'll get a copy
14 of the transcript of your deposition, and we want
15 you to read and sign it.

02:10PM

16 THE WITNESS: Okay.

17 (Whereupon, the deposition was
18 concluded at 2:10 p.m.)
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23
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25

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SIGNATURE PAGE

I, Robert Taylor, PhD, do hereby certify
that the foregoing deposition was presented to me by
Lisa A. Steinmeyer as a true and correct transcript
of the proceedings in the above styled and numbered
cause, and I now sign the same as true and correct.

WITNESS my hand this _____ day of
_____, 2008.

ROBERT TAYLOR, PhD

SUBSCRIBED AND SWORN TO before me this
_____ day of _____, 2008.

Notary Public

My Commission Expires:

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C E R T I F I C A T E

STATE OF OKLAHOMA)
) ss.
COUNTY OF TULSA)

I further certify that the foregoing 188 pages contain a full, true and correct transcript of the deposition taken at such time and place.

WITNESS MY HAND AND SEAL this 22nd day
of July, 2008.

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